

EXHIBIT P

<p>1 2 THE UNITED STATES DISTRICT COURT 3 SOUTHERN DISTRICT OF NEW YORK 4 MARJORIE PHILLIPS, 5 Plaintiff, 6 7 -against- Civil Action No.: 8 17-cv-00221 (GBD) 9 10 THE FASHION INSTITUTE OF TECHNOLOGY, MARY 11 DAVIS, and MARILYN BARTON, 12 Defendants. 13 DATE: December 21, 2021 14 TIME: 10:09 a.m. 15 16 DEPOSITION 17 of the Defendant, MARY E. DAVIS, Ph.D., s/h/a 18 MARY DAVIS, by the Plaintiff, pursuant to a 19 Notice, held via Video Conferencing, before 20 Lesley Simpson, a Notary Public of the State 21 of New York. 22 23 24 25</p>	<p>1 2 ALSO PRESENT: 3 MARJORIE PHILLIPS, Plaintiff 4 MARILYN BARTON, Defendant 5 ANDRE THOMAS, Exhibit Manager 6 PFP REPORTING 7 * * * 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>1 2 A P P E A R A N C E S : 3 4 THE COCHRAN FIRM, P.C. 5 Attorneys for the Plaintiff 6 One Exchange Place, 23rd Floor 7 New York, New York 10006 8 BY: DEREK S. SELLS, ESQ. 9 MINA MALIK, ESQ. 10 MONIQUE MINNER, ESQ. 11 12 NIXON PEABODY LLP 13 Attorneys for the Defendant 14 THE FASHION INSTITUTE OF TECHNOLOGY 15 50 Jericho Quadrangle, Suite 300 16 Jericho, New York 11753 17 BY: NICHOLAS MELITO, ESQ. 18 ROSE NANKERVIS, ESQ. 19 20 SARETSKY KATZ & DRANOFF LLP 21 Attorneys for the Defendant 22 MARY DAVIS 23 475 Park Avenue South 24 New York, New York 10016 25 BY: ERIC DRANOFF, ESQ. 26 27 BERANBAUM MENKEN LLP 28 Attorneys for the Defendant 29 MARILYN BARTON 30 80 Pine Street, 33rd Floor 31 New York, New York 10005 32 BY: BRUCE MENKEN, ESQ.</p>	<p>1 2 F E D E R A L S T I P U L A T I O N S 3 4 IT IS HEREBY STIPULATED AND AGREED by and 5 between the counsel for the respective parties 6 herein that the sealing, filing and 7 certification of the within deposition be 8 waived; that the original of the deposition 9 may be signed and sworn to by the witness 10 before anyone authorized to administer an 11 oath, with the same effect as if signed before 12 a Judge of the Court; that an unsigned copy of 13 the deposition may be used with the same force 14 and effect as if signed by the witness, 30 15 days after service of the original & 1 copy of 16 same upon counsel for the witness. 17 18 IT IS FURTHER STIPULATED AND AGREED that 19 all objections except as to form, are reserved 20 to the time of trial. 21 22 23 24 25</p>

<p>1 2 M A R Y E. D A V I S, Ph.D, having been 3 first duly sworn before a Notary Public of the 4 State of New York was sworn and testified as 5 follows: 6 EXAMINATION BY 7 MR. SELLS: 8 Q. Please, state your name and address 9 for the record. 10 A. Mary E. Davis. 82 Litchfield 11 Turnpike, Bethany, Connecticut 06524. 12 L-I-T-C-H-F-I-E-L-D. 13 Q. Good morning, Dr. Davis. 14 A. Good morning. 15 Q. My name is Derek Sellis. I represent 16 Marjorie Phillips in a lawsuit against F.I.T. 17 as well as yourself and Marilyn Barton. I 18 will be asking you some questions today in 19 connection with the lawsuit, some of the 20 claims that have been made in the lawsuit. 21 My first question to you is whether 22 or not you will be able to understand 23 questions that are asked of you today? 24 A. I fully expect to. 25 Q. So, you are not taking any medicine</p>	<p>5 1 DAVIS, Ph.D. 2 College in Notre Dame, Indiana in 1981 with a 3 Bachelor's Degree in music; piano 4 performance. 5 Then I went onto the Peabody 6 Conservatory in Baltimore where I earned a 7 Master's Degree in piano performance. That 8 would have been in 1983. 9 And then I entered the workforce. I 10 worked briefly as a paralegal in Washington 11 D.C. for a firm called Jordan Coyne & Savits. 12 And that firm split up and I worked for one 13 group of the partners who started a new firm 14 called Jordan & Lee. This is all in the 15 1980s now. 16 And I went from there to work for 17 the President's Commission on Organized Crime 18 where I wrote the report on drug trafficking 19 and organized crime. 20 And from there, I went to the 21 Architectural and Barriers -- Architectural 22 Transportation Barriers Compliance Board 23 where I worked for a year as legislative 24 aide. 25 And then, I went to the law firm of</p>
<p>6 1 DAVIS, Ph.D. 2 or any other substance that will affect your 3 ability to understand questions; is that 4 correct? 5 A. No, I am not. 6 Q. If I ask a question you do not 7 understand, please let me know so that I can 8 rephrase it's or ask the question in a way 9 that you do understand it. Is that fair? 10 A. Fair enough. 11 Q. If I ask you a question and you 12 answer the question, I will assume that you 13 understood my question and that you are just 14 answering my question. Is that good? 15 A. That's fine. 16 Q. You are allowed to take a break 17 almost at any time today, just let me know 18 and we can take a break. 19 I just ask if there is a pending 20 question, that you answer the question before 21 you take a break. 22 A. Okay. 23 Q. Can you give us a run down of your 24 career? 25 A. Sure. I graduated from St. Mary's</p>	<p>8 1 DAVIS, Ph.D. 2 Dewey Ballantine in DC where I worked for 3 about five years as a legislative specialist. 4 And then, I went back to school 5 around 1990 and earned another Master's 6 Degree in music history from the New England 7 Conservatory in Boston and entered the Ph.D. 8 program at Harvard on completion of that 9 degree in 1992. 10 So, I earned another Master's Degree 11 at Harvard on the way to Ph.D., which I 12 completed 1997; that was a Ph.D. in 13 musicology. 14 After that, I worked for one 15 semester at the University of South Carolina 16 as a sabbatical replacement faculty member 17 and got a full-time tenure track faculty 18 position at Case Western Reserve University 19 in Cleveland, Ohio where I was a member of 20 the faculty in the Music Department. I 21 started as an assist professor and earned 22 sequential promotions there to associate 23 professor and then full professor. I was 24 appointed the chair of the Department of 25 Music. I also served as associate director</p>

<p>1 DAVIS, Ph.D.</p> <p>2 of the Baker North Center for Humanities for 3 a number of years. And I was the university 4 liaison to the Rock & Roll Hall of Fame and 5 Museum; that was 1998 to 2012 when I was 6 recruited by F.I.T. to the job of dean of the 7 Graduate School -- School of Graduate 8 Studies.</p> <p>9 Q. Have you published any books or 10 papers?</p> <p>11 A. I have. I have published four 12 non-fiction books, scholarly books, and many 13 book chapters, numerous essays in scholarly 14 journals. I've also published some in -- 15 they're not specifically scholarly press, 16 press for more general readership. I 17 published online. I have given many 18 conference presentations and participated in 19 many scholarly dialogues over the years.</p> <p>20 Q. Now, have ever been accused of 21 racist behavior?</p> <p>22 A. I don't know what you mean by 23 "racist behavior."</p> <p>24 Q. What do you mean you don't know what 25 I mean by racist behavior?</p>	<p>9</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, sir. I'm saying I don't 3 understand what your terminology of "racist 4 behavior" refers to. I don't understand what 5 you mean by that.</p> <p>6 Q. So, you understand what "racist 7 behavior" is, right?</p> <p>8 A. I do not have -- have a blanket 9 understanding of what you are calling "racist 10 behavior."</p> <p>11 Q. Okay. All right.</p> <p>12 MR. SELLS: Can we pull up 13 Exhibit 32.</p> <p>14 (The image is shared on the 15 computer screen.)</p> <p>16 Q. I'm showing you what's been 17 previously marked as Exhibit 32, Plaintiff's 18 Exhibit 32. This is a picture that was in 19 the New York Post article of February 18 of 20 2020. It's captioned, "F.I.T. apologizes for 21 clearly racist alumni fashion show." Do you 22 see that?</p> <p>23 A. I do.</p> <p>24 Q. Looking at that picture, do you 25 believe that that is a clearly racist</p>
<p>10</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I'm trying to discern whether you 3 are referring to the matter before us right 4 now in which I am accused of various things 5 related to race discrimination or whether 6 there is something else that you are asking 7 about. I don't understand.</p> <p>8 Q. The question was, Have you ever been 9 accused of racist behavior? So, the answer 10 is, yes, I have been or no, I haven't been. 11 Then we can explore those.</p> <p>12 A. I would like to restate that I don't 13 understand what you mean by "racist 14 behavior."</p> <p>15 Q. When you say you don't know what I 16 mean by "racist behavior," what do you 17 understand the definition of "racist 18 behavior" to mean?</p> <p>19 A. I don't have a standard definition 20 for "racist behavior." I would understand 21 individual situations based on the context 22 and the content of the situations.</p> <p>23 Q. So as you sit here now, are you 24 saying you do not know whether you have been 25 accused of racist behavior before?</p>	<p>12</p> <p>1 DAVIS, Ph.D.</p> <p>2 photograph or does that depict a clearly 3 racist image?</p> <p>4 A. I personally do not believe this is 5 a racist image.</p> <p>6 Q. Okay. Why is that?</p> <p>7 A. It could be because I have a context 8 for understanding that image.</p> <p>9 Q. You said you have a context as to 10 why you believe the image is not racist?</p> <p>11 A. That's correct.</p> <p>12 Q. What is that context?</p> <p>13 A. I know the history of how this look 14 came to be.</p> <p>15 Q. What is your history of how this 16 look came to be?</p> <p>17 A. This is the work of one alumni 18 fashion designer who by the time this 19 photograph was taken was a professional 20 designer. A young man named Jung Ki Wang who 21 had been a student in the MFA fashion design 22 program.</p> <p>23 As part of the curriculum in that 24 program, students were required to develop a 25 thesis idea over the course of two years.</p>

<p>1 DAVIS, Ph.D.</p> <p>2 Jung Ki's thesis had to do with distortions</p> <p>3 and conceptions of beauty.</p> <p>4 As I understand it, having spoken to</p> <p>5 him, he broke a finger at some point in the</p> <p>6 first semester I believe of his F.I.T.</p> <p>7 education; and he became fascinated with the</p> <p>8 idea of what happens when one body part is</p> <p>9 distorted. And so his collection, which is</p> <p>10 documented in thesis material for all four</p> <p>11 semesters of his work, his thesis documents</p> <p>12 his explorations of that concept of beauty.</p> <p>13 And so, this look was an end result of that</p> <p>14 thesis work.</p> <p>15 However, the accessories, which are</p> <p>16 depicted here in this photograph, were</p> <p>17 selected by Jung Ki last minute prior to show</p> <p>18 because he did not have time to make the</p> <p>19 accessories that he intended to make to</p> <p>20 accompany his garments. The accessories that</p> <p>21 he intended to make based on his thesis</p> <p>22 materials -- which were displayed at F.I.T.</p> <p>23 in May, I believe, of 2019 -- the accessories</p> <p>24 were meant to be made of the same material as</p> <p>25 the garments. So, the accessories that he</p>	<p>13</p> <p>1 DAVIS, Ph.D.</p> <p>2 accessories. Mr. Wang asked for</p> <p>3 recommendations, for help in the days</p> <p>4 preceding the fashion show. He asked for</p> <p>5 assistance in identifying accessories that</p> <p>6 could perhaps fill the gaps between what he</p> <p>7 intended and nothing at all. And to my</p> <p>8 understanding, Mr. Farmer provided a list of</p> <p>9 options for him based on what he could find</p> <p>10 on Amazon, and these were the accessories</p> <p>11 that -- among the accessories, to my</p> <p>12 understanding, that were included in the list</p> <p>13 that Jung Ki selected from.</p> <p>14 MR. SELL: We can take down the</p> <p>15 photograph.</p> <p>16 Q. Dr. Davis, you're saying that Kyle</p> <p>17 Farmer had no responsibility in the</p> <p>18 accessories that were used in the fashion</p> <p>19 show; is that correct?</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form. You can answer.</p> <p>22 A. No, Mr. Sells, that is not correct.</p> <p>23 As I just stated, Mr. Farmer provided Mr. Wang,</p> <p>24 at Mr. Wang's request, with a list of options</p> <p>25 he pulled from Amazon that Mr. Wang could</p>
<p>14</p> <p>1 DAVIS, Ph.D.</p> <p>2 ended up using were not part of his original</p> <p>3 conception, but they were his choice.</p> <p>4 Q. That's why the big lips and the big</p> <p>5 ears are not racist to you; is that correct,</p> <p>6 Dr. Davis?</p> <p>7 A. That is correct. I certainly can</p> <p>8 understand that these would be offense to</p> <p>9 others.</p> <p>10 Q. Why? Why do you think it would be</p> <p>11 offensive to others?</p> <p>12 A. I can imagine that it could invoke</p> <p>13 racist tropes including tropes of minstrelsy</p> <p>14 that would be offensive to certain people.</p> <p>15 Q. Got it.</p> <p>16 You know and you left out of your</p> <p>17 answer that those accessories, the big lips</p> <p>18 and the big ears, came from Kyle Farmer,</p> <p>19 someone who is a direct report to you at the</p> <p>20 time, correct?</p> <p>21 A. No, Mr. Sells, that is not --</p> <p>22 Q. Oh, really --</p> <p>23 A. Yes -- that is not correct --</p> <p>24 Q. Okay. Okay --</p> <p>25 A. Mr. Farmer did not select those</p>	<p>16</p> <p>1 DAVIS, Ph.D.</p> <p>2 choose from, if he wanted to, to accessorize</p> <p>3 his designs for the show.</p> <p>4 Q. Well, that's not what you said in</p> <p>5 your lawsuit, right?</p> <p>6 A. No; that is exactly what I said in</p> <p>7 my lawsuit.</p> <p>8 Q. Oh, okay.</p> <p>9 MR. SELLS: Can we pull up</p> <p>10 Exhibit 59.</p> <p>11 (Whereupon, Plaintiff's Exhibit</p> <p>12 59, lawsuit between F.I.T. and Dr. Brown,</p> <p>13 was marked for identification as of</p> <p>14 this date.)</p> <p>15 (The image is shared on the</p> <p>16 computer screen.)</p> <p>17 Q. You recognize this; this is your</p> <p>18 lawsuit between F.I.T. and Dr. Brown, right?</p> <p>19 A. Yes.</p> <p>20 MR. SELLS: If we could go to</p> <p>21 last page of the exhibit.</p> <p>22 Q. You put a verification on this;</p> <p>23 isn't that right?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">17</p> <p>1 DAVIS, Ph.D.</p> <p>2 And so, you swore that the contents</p> <p>3 of this document and the allegations therein</p> <p>4 were true; right? You swore to that, right?</p> <p>5 A. If you read the sentence it says,</p> <p>6 "The contents are true to my knowledge except</p> <p>7 as to matters therein stated to be alleged</p> <p>8 upon information and belief".</p> <p>9 Q. All right. Good.</p> <p>10 MR. SELLS: Could we now go to</p> <p>11 page 13 of the complaint, Paragraph</p> <p>12 42.</p> <p>13 (The image is shared on the</p> <p>14 computer screen.)</p> <p>15 Q. What you said in your complaint was</p> <p>16 that "following the Post article, both</p> <p>17 Professor Farmer and Mr. Thornn, at the</p> <p>18 behest of the administration, publicly took</p> <p>19 responsibility for the decisions that have</p> <p>20 been made with respect to the accessories."</p> <p>21 A. Yes, sir.</p> <p>22 Q. That's what you wrote?</p> <p>23 A. That's correct. These are --</p> <p>24 Q. Okay.</p> <p>25 So, Kyle Farmer and Richard Thornn</p>	<p style="text-align: right;">19</p> <p>1 DAVIS, Ph.D.</p> <p>2 behest of the administration Mr. Farmer took</p> <p>3 responsibility. It does not state that</p> <p>4 Mr. Farmer selected the accessories. There</p> <p>5 is a difference between those two things.</p> <p>6 Q. Okay.</p> <p>7 So you're saying that Mr. Farmer</p> <p>8 took responsibility only because F.I.T. asked</p> <p>9 him to take responsibility; is that correct?</p> <p>10 A. I cannot speak as to why Mr. Farmer</p> <p>11 did that. I believe he is on record about</p> <p>12 that in another matter.</p> <p>13 Q. Okay.</p> <p>14 So when you say at the behest, who</p> <p>15 asked him to take full responsibility or part</p> <p>16 responsibility along with Mr. Thornn for</p> <p>17 those accessories?</p> <p>18 A. I was in meetings where this was</p> <p>19 discussed with professor -- with Vice</p> <p>20 President Loreta Keane, dean for</p> <p>21 communication and external relations. But I</p> <p>22 was not privy to the full conversation.</p> <p>23 Q. So, you are saying that</p> <p>24 administrators at F.I.T. asked Mr. Farmer to</p> <p>25 lie and apologize for something he had no</p>
<p style="text-align: right;">18</p> <p>1 DAVIS, Ph.D.</p> <p>2 took responsibility for the decisions that had</p> <p>3 been made with respect to the accessories;</p> <p>4 that's what you wrote under oath in your</p> <p>5 complaint; is that correct?</p> <p>6 A. Yes, sir. What I wrote is --</p> <p>7 Q. No. No --</p> <p>8 A. No. No.</p> <p>9 Q. This is a "yes" or "no" question.</p> <p>10 Now --</p> <p>11 MR. SELL: We could take down</p> <p>12 the document.</p> <p>13 Q. But here today you're saying that</p> <p>14 Mr. Farmer had no responsibility other than</p> <p>15 giving the links to the designer. But yet,</p> <p>16 they took, according to your complaint, they</p> <p>17 took responsibility, Mr. Farmer took</p> <p>18 responsibility for the decisions that had</p> <p>19 been made with respect to the accessories.</p> <p>20 So now you're changing it up, right?</p> <p>21 MR. DRANOFF: Object to the</p> <p>22 form. She is not changing it up.</p> <p>23 Objection to form.</p> <p>24 A. Mr. Sells, these are two separate</p> <p>25 things. My complaint states that at the</p>	<p style="text-align: right;">20</p> <p>1 DAVIS, Ph.D.</p> <p>2 responsibility for; is that right?</p> <p>3 A. No, sir.</p> <p>4 MR. MELITO: Objection to form.</p> <p>5 A. No, sir. Those are -- again, it is</p> <p>6 not an accurate representation. Kyle was</p> <p>7 asked, I believe, to take responsibility for</p> <p>8 the decisions and did so, as was Richard</p> <p>9 Thornn, the show producer. They issued these</p> <p>10 apologies publicly and that is a different</p> <p>11 matter from Kyle selecting the accessories.</p> <p>12 Kyle select -- Kyle did not select</p> <p>13 the accessories. He provided a list of the</p> <p>14 accessories from which Mr. Wang selected.</p> <p>15 That doesn't mean that Kyle was unable take</p> <p>16 responsibility for the decisions.</p> <p>17 Q. Got it.</p> <p>18 So how is it that you know that</p> <p>19 Mr. Farmer did not select the accessories;</p> <p>20 how do you know that?</p> <p>21 A. Because I was in meetings and</p> <p>22 discussions where he -- this was -- he</p> <p>23 explained this. And also where Jung Ki Wang</p> <p>24 attested to it.</p> <p>25 Q. And you know that they were telling</p>

<p style="text-align: right;">21</p> <p>1 DAVIS, Ph.D.</p> <p>2 the truth, of course, right?</p> <p>3 A. I -- I believe what was told to -- I</p> <p>4 believe the -- that it is the truth.</p> <p>5 Q. Oh, okay.</p> <p>6 And why do you believe it's the</p> <p>7 truth?</p> <p>8 A. In Jung Ki's case, because I know</p> <p>9 where he was aiming -- I know what the</p> <p>10 original designs were and I know that based</p> <p>11 on what he -- he reported after the fashion</p> <p>12 show that this was what happened. That he</p> <p>13 selected the accessories.</p> <p>14 Q. Because in your complaint, you</p> <p>15 allege that you had no knowledge of any</p> <p>16 decisions that were made with respect to the</p> <p>17 fashion show; isn't that what you say in your</p> <p>18 complaint?</p> <p>19 A. Yes, Mr. Sells. I did add in my</p> <p>20 complaint, but I said I had no knowledge</p> <p>21 about them prior to seeing them come down the</p> <p>22 runway. I had no advanced knowledge of the</p> <p>23 accessories that were selected --</p> <p>24 Q. Okay.</p> <p>25 So --</p>	<p style="text-align: right;">23</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Yes --</p> <p>3 A. -- as part of my jobs, yes. I have</p> <p>4 learned to read and understand many kinds of</p> <p>5 policies including those that you have</p> <p>6 referenced.</p> <p>7 Q. Got it.</p> <p>8 And in the various positions that</p> <p>9 you have occupied in your career, have you</p> <p>10 read antidiscrimination policies in a way so</p> <p>11 that you could understand what your role is</p> <p>12 in the event that an issue of discrimination</p> <p>13 is presented to you; have you done that?</p> <p>14 A. Yes, I believe I had.</p> <p>15 Q. Now, did you do that with regard to</p> <p>16 your career at F.I.T. when you became a dean?</p> <p>17 A. Yes.</p> <p>18 Q. And when did you become a dean?</p> <p>19 A. 2012.</p> <p>20 Q. Okay.</p> <p>21 MR. SELLS: Can we go to</p> <p>22 Plaintiff's Exhibit 3.</p> <p>23 (The image is shared on the</p> <p>24 computer screen.)</p> <p>25 Q. Do you recognize this, Dr. Davis?</p>
<p style="text-align: right;">22</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. As far as --</p> <p>3 Q. -- opinions about who selected the</p> <p>4 accessories, do you have personal knowledge</p> <p>5 of, right? You weren't present --</p> <p>6 A. I'm sorry?</p> <p>7 Q. You weren't present when those</p> <p>8 accessories were chosen?</p> <p>9 A. I was not present.</p> <p>10 Q. Okay.</p> <p>11 And you have chosen to believe your</p> <p>12 version of how those accessories got on the</p> <p>13 models lips and ears, right?</p> <p>14 A. No, sir. I'm not choosing to</p> <p>15 believe my version. I'm -- I'm reporting</p> <p>16 what was told to me in the weeks following</p> <p>17 the fashion show about the ways in which the</p> <p>18 accessories were selected.</p> <p>19 Q. Got it.</p> <p>20 Now, let me ask you something. In</p> <p>21 your career working for various companies and</p> <p>22 institutions, have you learned how to read</p> <p>23 and look at -- read and understand, I should</p> <p>24 say, antidiscrimination policies?</p> <p>25 A. In my career --</p>	<p style="text-align: right;">24</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Yes, I do.</p> <p>3 Q. You understand that this is F.I.T.'s</p> <p>4 non-discrimination and antiharassment policy --</p> <p>5 A. Yes --</p> <p>6 Q. -- 2017?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What was your understanding of your</p> <p>9 responsibility as a dean if you received a</p> <p>10 complaint from an e-mail regarding racism?</p> <p>11 A. This policy speaks to</p> <p>12 non-discrimination and antiharassment; and I</p> <p>13 understood my responsibility in this to be to</p> <p>14 report incidents of non-discrimination and</p> <p>15 antiharassment as defined in the policy.</p> <p>16 Q. Report, when you say "report,"</p> <p>17 report to who?</p> <p>18 A. To the Title 9 officer. I believe</p> <p>19 there is -- I have not worked at F.I.T. for</p> <p>20 quite some time now. I believe there is a</p> <p>21 section to this that also addresses students.</p> <p>22 Q. What was your responsibility as the</p> <p>23 dean if a student reported an allegation of</p> <p>24 race discrimination?</p> <p>25 A. The practice of discrimination in --</p>

<p style="text-align: right;">25</p> <p>1 DAVIS, Ph.D.</p> <p>2 in regards to students just had another layer</p> <p>3 to it where I would report the incidents to</p> <p>4 my immediate supervisor, Giacomo Oliva.</p> <p>5 Q. Okay.</p> <p>6 And where did you get that from?</p> <p>7 A. That was a practice.</p> <p>8 Q. That was a practice; but it is not</p> <p>9 in this policy; is that correct?</p> <p>10 A. I believe that's correct.</p> <p>11 Q. What do you believe is correct?</p> <p>12 A. I believe that it was a practice</p> <p>13 that had been in place in the college before</p> <p>14 I joined, and that it is not written into the</p> <p>15 policy.</p> <p>16 Q. Okay.</p> <p>17 So, where did this practice come</p> <p>18 from?</p> <p>19 A. I don't know.</p> <p>20 MR. SELLS: If we could go to</p> <p>21 page 6 where it says "investigation</p> <p>22 and disciplinary procedures."</p> <p>23 Q. You see it says, "For purposes of</p> <p>24 this policy, the status of the Respondent</p> <p>25 will determine the applicable disciplinary</p>	<p style="text-align: right;">27</p> <p>1 DAVIS, Ph.D.</p> <p>2 dean, department director, department</p> <p>3 chairperson or coordinator or any other</p> <p>4 person with supervisory responsibility."</p> <p>5 Then it says, "Although such</p> <p>6 complaints need not be in writing, F.I.T.</p> <p>7 strongly encourages individuals to file a</p> <p>8 written complaint. Any person with</p> <p>9 supervisory responsibility who receives a</p> <p>10 complaint formally or informally in writing,</p> <p>11 orally or otherwise of discrimination,</p> <p>12 discriminatory harassment or retaliation,</p> <p>13 must report such information to the</p> <p>14 affirmative action officer immediately."</p> <p>15 Is that what the policy says?</p> <p>16 A. Yes; you just read it to me.</p> <p>17 Q. And was that your understanding of</p> <p>18 the policy back in 2017, 2018, 2019 and '20?</p> <p>19 A. Yes, that is the policy.</p> <p>20 Q. Got it.</p> <p>21 MR. SELLS: We can take down</p> <p>22 the document.</p> <p>23 Q. Did you understand as part of the</p> <p>24 antidiscrimination policy that when you as a</p> <p>25 supervisory official, as a dean in fact,</p>
<p style="text-align: right;">26</p> <p>1 DAVIS, Ph.D.</p> <p>2 procedures; for example, if the Respondent is</p> <p>3 a student, procedures used will be those</p> <p>4 delineated for students in this policy.</p> <p>5 If Respondent is an employee, the</p> <p>6 procedures used will be those delineated for</p> <p>7 employees in this policy."</p> <p>8 So, you see there's a distinction</p> <p>9 between complaints against students and</p> <p>10 complaints against employees. You understand</p> <p>11 that, right?</p> <p>12 A. Yes.</p> <p>13 Q. So, now let's get to the reporting</p> <p>14 complaints investigation procedure where a</p> <p>15 student is the Respondent.</p> <p>16 So, "Under the policy, any person</p> <p>17 who believes they may have been a victim of</p> <p>18 or believes they may have witnessed</p> <p>19 discrimination, discriminatory harassment or</p> <p>20 retaliation permitted by a student should</p> <p>21 report the incident to the Affirmative Action</p> <p>22 Office in the Office of Compliance and</p> <p>23 Audit." And then it gives the address.</p> <p>24 "Alternatively, such incidents may</p> <p>25 be reported to any senior administrator,</p>	<p style="text-align: right;">28</p> <p>1 DAVIS, Ph.D.</p> <p>2 received a complaint of discrimination that</p> <p>3 you were supposed to investigate it yourself?</p> <p>4 A. I'm sorry. Could you state that</p> <p>5 question again?</p> <p>6 MR. SELLS: Lesley, read back</p> <p>7 the question, please.</p> <p>8 (Whereupon, the requested</p> <p>9 portion of the transcript was read</p> <p>10 back.)</p> <p>11 A. No, I was not supposed to</p> <p>12 investigate it myself per the policy. I was</p> <p>13 supposed to report it.</p> <p>14 Q. And so, if you did undertake to</p> <p>15 investigate a complaint of discrimination</p> <p>16 yourself that would be in violation of the</p> <p>17 policy, right?</p> <p>18 A. I'm not understanding your question.</p> <p>19 I'm sorry. I'll tell you --- I'm not</p> <p>20 understanding the word "investigate."</p> <p>21 Q. What did you say?</p> <p>22 A. I'm not understanding what you mean</p> <p>23 by the word "investigate."</p> <p>24 Q. "Investigate," okay.</p> <p>25 What about the word "investigate" do</p>

<p>1 DAVIS, Ph.D.</p> <p>2 you not know?</p> <p>3 A. I'm -- I'm just not understanding</p> <p>4 what you mean by that word in this context.</p> <p>5 MR. SELLS: Can we put the</p> <p>6 policy backup again, please.</p> <p>7 Q. We just went through the report and</p> <p>8 complaints. Let's go to the next page, page</p> <p>9 7. Then it talks about "you must report such</p> <p>10 information to the affirmative action officer</p> <p>11 immediately."</p> <p>12 You saw that, right? We went</p> <p>13 through that.</p> <p>14 A. Yes.</p> <p>15 Q. Now, the next part of the equation</p> <p>16 talks about what? Can you just read that out</p> <p>17 loud for us?</p> <p>18 A. Yes. It's pre-investigation.</p> <p>19 Q. Pre-investigation, okay.</p> <p>20 So, I thought you said you</p> <p>21 understood what the policy was --</p> <p>22 A. I --</p> <p>23 Q. -- did you understand or did you not</p> <p>24 understand, Dr. Davis?</p> <p>25 MR. DRANOFF: Object to the</p>	<p>29</p> <p>1 DAVIS, Ph.D.</p> <p>2 the word "immediately"?</p> <p>3 A. As -- as -- as it states</p> <p>4 "immediately."</p> <p>5 Q. I know; but what is your</p> <p>6 understanding of immediately? What does that</p> <p>7 mean to you as it relates to this policy?</p> <p>8 A. I -- I think it means immediately.</p> <p>9 Q. Okay.</p> <p>10 So, what is your definition of</p> <p>11 immediately?</p> <p>12 A. My definition of immediate is the</p> <p>13 definition of immediate, right away.</p> <p>14 Q. Right away, as soon as you get it,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 So now, the next thing is</p> <p>19 "pre-investigation." So the policy says that</p> <p>20 "once the affirmative action officer gets the</p> <p>21 complaint, the affirmative action officer</p> <p>22 will review the reported complaint and</p> <p>23 conduct an initial assessment to determine if</p> <p>24 the case falls within the scope of this</p> <p>25 policy and it's procedures."</p>
<p>30</p> <p>1 DAVIS, Ph.D.</p> <p>2 form.</p> <p>3 A. So again, it has been several years</p> <p>4 since I have been engaged with this policy.</p> <p>5 When I was on the job at F.I.T., I was very</p> <p>6 attuned to this policy and aware of its</p> <p>7 provision.</p> <p>8 Q. All right. So you're saying it's</p> <p>9 been several years; is that what you just</p> <p>10 said? It's been several years since you</p> <p>11 understood this policy?</p> <p>12 A. I said it's been -- it's now been</p> <p>13 almost two years since I have worked at</p> <p>14 F.I.T.</p> <p>15 Q. Okay.</p> <p>16 A. And so I have not been engaged with</p> <p>17 this policy for that period of time as to</p> <p>18 its specifics.</p> <p>19 Q. So when you say "several," you</p> <p>20 exaggerated?</p> <p>21 A. I'm sorry. It has been since</p> <p>22 February 2020.</p> <p>23 Q. So, the report is supposed to go to</p> <p>24 the affirmative action officer immediately.</p> <p>25 Now, what is your understanding of</p>	<p>32</p> <p>1 DAVIS, Ph.D.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. So under this policy, if you as dean</p> <p>5 receive a complaint of discrimination, then</p> <p>6 you're supposed to immediately inform the</p> <p>7 affirmative action officer who will then --</p> <p>8 the affirmative action officer will then do</p> <p>9 the assessment of whether or not that</p> <p>10 complaint is something that they will</p> <p>11 investigate --</p> <p>12 A. That is --</p> <p>13 Q. -- is that right?</p> <p>14 A. That is correct, but it hinges on</p> <p>15 the definitions of the three topics that are</p> <p>16 covered here in the policy and which are</p> <p>17 defined in the policy which are</p> <p>18 discrimination, discriminatory harassment and</p> <p>19 retaliation.</p> <p>20 So in the role that I held at</p> <p>21 F.I.T., I was guided by the definitions in</p> <p>22 the policy in making the determination about</p> <p>23 whether a complaint in any of those areas had</p> <p>24 been lodged.</p> <p>25 Q. So, you took it upon yourself --</p>

<p style="text-align: right;">33</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No.</p> <p>3 Q. -- to decide whether or not if you</p> <p>4 heard something that might be discriminatory</p> <p>5 or might be harassment or might be</p> <p>6 retaliation, you took it upon yourself to</p> <p>7 investigate whether it actually fit one of</p> <p>8 those definitions before you would then pass</p> <p>9 on the complaint to the affirmative action</p> <p>10 officer; is that right?</p> <p>11 A. No, sir, that is not correct. I was</p> <p>12 guided in my decisionmaking regarding this</p> <p>13 policy by the terms of the policy which</p> <p>14 included definitions.</p> <p>15 Q. Okay.</p> <p>16 So you understood the policy to</p> <p>17 leave that assessment to the affirmative</p> <p>18 action officer, didn't you?</p> <p>19 A. No, sir. I understood that when a</p> <p>20 complaint of discrimination, discriminatory</p> <p>21 harassment or retaliation was lodged in</p> <p>22 compliance with the terms as outlined in the</p> <p>23 definitions included in this policy that I</p> <p>24 was then to refer it to the affirmative</p> <p>25 action officer who would then begin the</p>	<p style="text-align: right;">35</p> <p>1 DAVIS, Ph.D.</p> <p>2 used in the complaint.</p> <p>3 Q. Now, is that a complaint of a racial</p> <p>4 nature?</p> <p>5 A. That was a complaint that came in a</p> <p>6 broad context from students who wanted to</p> <p>7 discuss with me not -- not specifically the</p> <p>8 fashion show but the -- the larger scope of</p> <p>9 activities in the fashion design studio. So</p> <p>10 I -- that was -- that was the context for</p> <p>11 that comment.</p> <p>12 Q. Okay.</p> <p>13 So this came about after the fashion</p> <p>14 show, but before you got fired, right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. All right.</p> <p>17 And your reaction to the complaint</p> <p>18 was to do your own investigation, correct?</p> <p>19 A. No, that is not correct.</p> <p>20 Q. No? So, you didn't receive e-mails</p> <p>21 from three students or two students</p> <p>22 suggesting that there were issues with the</p> <p>23 show that were racist in nature?</p> <p>24 A. I received e-mails from the</p> <p>25 students, which as I recall voiced concern</p>
<p style="text-align: right;">34</p> <p>1 DAVIS, Ph.D.</p> <p>2 investigation.</p> <p>3 Q. Okay.</p> <p>4 You received complaints from</p> <p>5 students --</p> <p>6 MR. SELLS: We can take down</p> <p>7 the document.</p> <p>8 Q. You received complaints from</p> <p>9 students about the fashion show being</p> <p>10 discriminatory in nature; did you not?</p> <p>11 A. No, that is not correct.</p> <p>12 Q. No?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 Let's talk about that for minute.</p> <p>16 Because obviously in your complaint you talk</p> <p>17 about receiving complaints from students</p> <p>18 concerning the racial insensitivity of the</p> <p>19 fashion show; isn't that right?</p> <p>20 A. That is correct.</p> <p>21 MR. DRANOFF: Object to the</p> <p>22 form.</p> <p>23 What is the answer?</p> <p>24 THE WITNESS: That is correct.</p> <p>25 The phrase "racial insensitivity" was</p>	<p style="text-align: right;">36</p> <p>1 DAVIS, Ph.D.</p> <p>2 about the show and the fallout from the show.</p> <p>3 There were concerns about Mr. Wang.</p> <p>4 By the time the students reached out</p> <p>5 to me, social media had already erupted</p> <p>6 around the show and Mr. Wang was under</p> <p>7 tremendous pressure. At that point, the</p> <p>8 students were concerned about him. There</p> <p>9 were numerous issues that the students wished</p> <p>10 to discuss with me, and they asked for a</p> <p>11 meeting with me and with Mr. Farmer.</p> <p>12 Q. They asked for it, you said?</p> <p>13 A. They did.</p> <p>14 Q. Okay.</p> <p>15 So now when you say issues about</p> <p>16 Mr. Wang, these issues centered on him</p> <p>17 putting on a racist fashion design, correct?</p> <p>18 A. No, that is not correct.</p> <p>19 Q. Well, they weren't concerned that</p> <p>20 his reputation was now being that of a</p> <p>21 racist; that wasn't their concern? Is that</p> <p>22 right?</p> <p>23 A. They were concerned that he was</p> <p>24 being unfairly pillared in the press and at</p> <p>25 that point in social media.</p>

<p>1 DAVIS, Ph.D.</p> <p>2 Q. As what?</p> <p>3 A. That he was fearful as somebody who 4 was incentive to the possible perception of 5 the accessories he used to compliment his 6 looks as being cultural incentive.</p> <p>7 Q. Can you not say the word? That he 8 was being unfairly — if you believe it, that 9 he was being unfairly criticized as a racist?</p> <p>10 A. I don't recall that -- the use of 11 that word for a fact. It may be that that 12 word was used; but I don't recall it.</p> <p>13 Q. So, does the word need to be used in 14 order for you to feel as though someone is 15 being described as a racist?</p> <p>16 A. I'm not sure I understand your 17 question. Are you talking about in 18 connection with Mr. Wang specifically?</p> <p>19 Q. Or yourself. Does someone need to 20 say that you're a racist in order for you to 21 understand that to be a complaint of racist 22 behavior; does someone have to actually say, 23 Dean Davis you're a racist in order for you 24 to understand an allegation that you are a 25 racist?</p>	<p>37</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Got it.</p> <p>3 So when you got the complaint, the 4 e-mail complaint from the students, you did 5 not refer that to the affirmative action 6 office, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. What you did is you met individually 9 with those students that e-mailed you, 10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And then again after you met with 13 them, you still did not report that to the 14 affirmative action officer, did you?</p> <p>15 A. That's correct.</p> <p>16 Q. No. Instead what you did was you 17 called for the entire second year class, the 18 cohort -- what is a "cohort" by the way?</p> <p>19 A. A "cohort" is a class of students.</p> <p>20 Q. Okay.</p> <p>21 You called for the cohort to meet 22 with you and Mr. Farmer; isn't that right?</p> <p>23 A. That was at the students' request 24 and after consultation with my immediate 25 supervisor, VP Oliva.</p>
<p>38</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Well, that would certainly 3 constitute an allegation that I was a racist.</p> <p>4 Q. But is that the only way that 5 someone could refer to you as being a racist 6 by actually calling you the word "racist"?</p> <p>7 A. No, there are other ways.</p> <p>8 Q. Right. It could be implied, right?</p> <p>9 A. I'm sorry. I didn't hear what you 10 said.</p> <p>11 Q. It could be implied by a certain use 12 of words, right?</p> <p>13 A. Certainly.</p> <p>14 Q. You could use the words cultural 15 insensitive. That's another way of saying 16 hey, someone's a racist, right?</p> <p>17 A. It can be.</p> <p>18 Q. Right. And so that's why F.I.T.'s 19 policy is to leave it up to the affirmative 20 action officer to make an initial assessment 21 about whether an allegation itself 22 constitutes a complaint of racial 23 discrimination, retaliation or harassment, 24 right.</p> <p>25 A. That is not my view of the policy.</p>	<p>40</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Really. Okay?</p> <p>3 MR. SELLS: Can we pull up 4 Exhibit 64.</p> <p>5 (Counsel is sharing the 6 computer screen image.)</p> <p>7 MR. SELLS: For the record, 8 this is a document marked Exhibit C. 9 Exhibit C to the motion to dismiss 10 Mary Davis' lawsuit, and it -- if we 11 could scroll up, I think, it's a 12 three-page document.</p> <p>13 Q. Now, Dean Davis --</p> <p>14 A. Sir, I'm no longer a dean --</p> <p>15 Q. Okay.</p> <p>16 Ms. Davis, you wrote this memo, 17 correct?</p> <p>18 A. I did.</p> <p>19 Q. And this was a memo to file dated 20 18th of February 2020, correct?</p> <p>21 A. That is correct.</p> <p>22 Q. Your meeting with MFA fashion design 23 second year cohort; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. The cohort, you said, it was entire</p>

<p style="text-align: right;">41</p> <p>1 DAVIS, Ph.D.</p> <p>2 second year class; is that correct?</p> <p>3 A. We invited everyone from the second</p> <p>4 year. I don't -- I can't attest to the fact</p> <p>5 that everyone attended.</p> <p>6 Q. All right. I see.</p> <p>7 So you just said that you invited</p> <p>8 everyone to the cohort, right?</p> <p>9 A. Everyone in second year cohort was</p> <p>10 invited to this meeting.</p> <p>11 Q. Yes, but just a few seconds ago you</p> <p>12 said that the students asked for the meeting?</p> <p>13 A. They did.</p> <p>14 Q. They did. So let's read your memo.</p> <p>15 "This meeting was called following</p> <p>16 my individual meetings with Students AB ---"</p> <p>17 it's blocked out " --- and LR who are the</p> <p>18 second year cohort in the MFA fashion design</p> <p>19 program which took place on Wednesday,</p> <p>20 February 12th. During those meetings both</p> <p>21 students raised issues about the MFA fashion</p> <p>22 show, as well as more general concerns about</p> <p>23 their experience in the program. In</p> <p>24 particular, A noted that she had perceived a</p> <p>25 possible problem with the styling of Jung Ki</p>	<p style="text-align: right;">43</p> <p>1 DAVIS, Ph.D.</p> <p>2 So nowhere in your introduction of</p> <p>3 this second year cohort meeting did you say</p> <p>4 that the students asked for the meeting,</p> <p>5 correct?</p> <p>6 A. I did not include that in this</p> <p>7 summary, but that does not mean that did not</p> <p>8 happen. It did.</p> <p>9 Q. Got it.</p> <p>10 And even though a student perceived</p> <p>11 a possible problem with the styling of Wang's</p> <p>12 collection and warned the show producer that</p> <p>13 the models felt uncomfortable wearing the</p> <p>14 styling elements, you did not report this</p> <p>15 immediately to the affirmative action</p> <p>16 officer, did you?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay.</p> <p>19 Instead, what you did was you</p> <p>20 alerted Kyle Farmer who reported directly to</p> <p>21 you that there was an issue with regard to</p> <p>22 the accessories, correct?</p> <p>23 A. Not correct.</p> <p>24 Q. Okay.</p> <p>25 So when they say that -- when you</p>
<p style="text-align: right;">42</p> <p>1 DAVIS, Ph.D.</p> <p>2 Wang's collection, and had warned the show</p> <p>3 producer, Richard Thornn, and Kyle ---" I take</p> <p>4 it that's Kyle Farmer?</p> <p>5 A. Correct.</p> <p>6 Q. --- that the models felt</p> <p>7 uncomfortable wearing the styling elements.</p> <p>8 She also indicated that Richard told</p> <p>9 her that she would never walk in my show</p> <p>10 after she had issued this warning. Most of</p> <p>11 the discussion with both students was focused</p> <p>12 more broadly on the culture in the MFA</p> <p>13 studio.</p> <p>14 After my discussion with them, I</p> <p>15 contacted Kyle and set a meeting with him to</p> <p>16 review the student concerns. This meeting</p> <p>17 took place on Thursday, February 13th.</p> <p>18 Following the meeting with Kyle, he and I</p> <p>19 called a meeting with the second year cohort</p> <p>20 for the morning of February 18th. This</p> <p>21 meeting took place from 10:30 a.m. to 12 p.m.</p> <p>22 in the MFA studio."</p> <p>23 Now, did I read that correctly?</p> <p>24 A. Yes, you did.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">44</p> <p>1 DAVIS, Ph.D.</p> <p>2 write that "the students perceived a possible</p> <p>3 problem with the styling of Wang's collection</p> <p>4 and warned the show producer," what were you</p> <p>5 talking about? What were they talking about?</p> <p>6 A. As I recall, one student that I</p> <p>7 reported here thought that the styling of</p> <p>8 Jung Ki's collection was offensive. She did</p> <p>9 not -- well, I'll just stop there.</p> <p>10 Q. And who was this student? What was</p> <p>11 his or her name?</p> <p>12 A. It's a -- it's a woman. Her name is</p> <p>13 AB, second year student in the fashion design</p> <p>14 program. She was also on a dean's fellow,</p> <p>15 which is a program that --</p> <p>16 Q. I just asked for her name.</p> <p>17 MR. MELITO: If we could mark</p> <p>18 that name confidential this part of</p> <p>19 the transcript is confidential it may</p> <p>20 implicate other statutes that schools</p> <p>21 have to follow.</p> <p>22 MR. SELLS: Yes, I don't have a</p> <p>23 problem with that.</p> <p>24 Q. Now, you said that a student said</p> <p>25 that she felt that Wang's selection and the</p>

<p style="text-align: right;">45</p> <p>1 DAVIS, Ph.D.</p> <p>2 styling elements were offensive; is that</p> <p>3 correct?</p> <p>4 A. I don't recall her exact words.</p> <p>5 Q. Well, you just said that they were</p> <p>6 offense --</p> <p>7 A. I know. I --- my recollection is</p> <p>8 that she was concerned, as I wrote here --- I</p> <p>9 think --- I think it is best to stick with</p> <p>10 what I wrote here, that she perceived a</p> <p>11 possible problem with the styling of Jung</p> <p>12 Ki's collection.</p> <p>13 Q. That's what she said. I think there</p> <p>14 was a possible problem, so I better go warn</p> <p>15 the producer that there's a possible problem.</p> <p>16 Is that what she said to you?</p> <p>17 A. I can't say for sure. I can tell</p> <p>18 you what I wrote in this memo.</p> <p>19 Q. Got it.</p> <p>20 Did you take notes of your</p> <p>21 conversation?</p> <p>22 A. I think --</p> <p>23 Q. -- with the student?</p> <p>24 A. I believe these are my notes.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">47</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. All right.</p> <p>4 But what you wrote is, "In</p> <p>5 particular, A noted that she had perceived a</p> <p>6 possible problem with the styling of Jung Ki</p> <p>7 Wang's collection and had warned the show</p> <p>8 producer, Richard Thorne, and Kyle that the</p> <p>9 models felt uncomfortable wearing the styling</p> <p>10 elements."</p> <p>11 Now, what about the models feeling</p> <p>12 uncomfortable wearing them; what was your</p> <p>13 understanding of the nature of this</p> <p>14 complaint?</p> <p>15 A. First of all, I would like to point</p> <p>16 out that the models were professional models</p> <p>17 who were engaged by the producer. They were</p> <p>18 not students or in any way related to F.I.T.</p> <p>19 So my responsibility regarding</p> <p>20 models was --- it did not really exist. As</p> <p>21 far as what the student said about the models</p> <p>22 feeling uncomfortable wearing the styling</p> <p>23 elements, I recall that there were issues of</p> <p>24 literally feeling uncomfortable particularly</p> <p>25 with the lips because those were designed to</p>
<p style="text-align: right;">46</p> <p>1 DAVIS, Ph.D.</p> <p>2 Well, you met with her on February</p> <p>3 12th, did you not?</p> <p>4 A. I did.</p> <p>5 Q. Okay.</p> <p>6 So this memo was written on February</p> <p>7 18th, right?</p> <p>8 A. That's correct.</p> <p>9 Q. So, you didn't take contemporaneous</p> <p>10 notes of your conversation with the student?</p> <p>11 A. I can't say.</p> <p>12 Q. Was it your practice back then to</p> <p>13 take notes?</p> <p>14 A. It depended on the situation; but I</p> <p>15 took a fair amount of notes. I don't know</p> <p>16 whether I have notes.</p> <p>17 Q. Got it.</p> <p>18 So a student tells you, look, it was</p> <p>19 offensive what I had seen, but you didn't</p> <p>20 bring that to the attention of the</p> <p>21 affirmative action officer, correct, on</p> <p>22 February 12th, right?</p> <p>23 A. I --- I did not.</p> <p>24 Q. Got it.</p> <p>25 What did the other student say you?</p>	<p style="text-align: right;">48</p> <p>1 DAVIS, Ph.D.</p> <p>2 stretch the mouth; and one of the models, as</p> <p>3 I recall, said that that was not comfortable</p> <p>4 for her. I don't -- I can't attest to what</p> <p>5 else that means in this context.</p> <p>6 Q. Got it.</p> <p>7 So according to you, when you wrote</p> <p>8 that the models felt uncomfortable wearing</p> <p>9 the styling element, it had nothing to do</p> <p>10 with the big lips and the big ears. It had</p> <p>11 to do with the fact that they literally felt</p> <p>12 uncomfortable because it was painful for them</p> <p>13 to put these accessories on; is that your</p> <p>14 understanding of it, Dean Davis?</p> <p>15 A. That is not --</p> <p>16 Q. I mean -- sorry, Dr. Davis.</p> <p>17 A. That is not my complete</p> <p>18 understanding. I'm just pointing out that I</p> <p>19 do recall that the word related to actual</p> <p>20 physical discomfort as well. I think it's</p> <p>21 worth keeping in mind that the styling</p> <p>22 elements here are not simply ears and the</p> <p>23 exaggerated lips, but they also included long</p> <p>24 gloves -- again, designed to emphasize a</p> <p>25 distortion of body parts -- and eyebrows,</p>

<p>1 DAVIS, Ph.D.</p> <p>2 oversized eyebrows.</p> <p>3 So, the characterization of all of</p> <p>4 the accessories as possibly invoking racist</p> <p>5 tropes or being offensive in ways that relate</p> <p>6 to racism is a sort of oversimplification of</p> <p>7 what was really going on with the design.</p> <p>8 Q. Got it.</p> <p>9 So, you're twisting it. Your</p> <p>10 twisting it to fit --</p> <p>11 MR. DRANOFF: Objection.</p> <p>12 Q. You're twisting it to fit your</p> <p>13 narrative --</p> <p>14 MR. DRANOFF: Object to the</p> <p>15 form.</p> <p>16 Q. Is that what you are trying to do?</p> <p>17 A. No, sir. No, sir.</p> <p>18 MR. DRANOFF: Just like you</p> <p>19 are, Derek.</p> <p>20 A. No, sir. I'm not twisting anything.</p> <p>21 I'm simply trying to answer your question.</p> <p>22 Q. Got it.</p> <p>23 And that is why you didn't present</p> <p>24 it to the affirmative action officer</p> <p>25 immediately, right?</p>	<p>49</p> <p>1 DAVIS, Ph.D.</p> <p>2 But he was also intimately</p> <p>3 associated with the selection of the</p> <p>4 accessories used by Mr. Wang, correct?</p> <p>5 MR. DRANOFF: Object to the</p> <p>6 form.</p> <p>7 A. No.</p> <p>8 Q. No, okay.</p> <p>9 So, "I contacted Kyle and set a</p> <p>10 meeting with him to review the student</p> <p>11 concerns."</p> <p>12 And "student concerns," just so I'm</p> <p>13 clear, had to do with Wang's collection and</p> <p>14 the warning -- and the warning that the</p> <p>15 student had given to Mr. Thornn and Mr. Farmer,</p> <p>16 correct?</p> <p>17 A. No, sir. If you return to the first</p> <p>18 paragraph, the sentence that begin, "most of</p> <p>19 the discussions with both students was</p> <p>20 focused more broadly on the culture in the</p> <p>21 MFA studio"; that was the crux of the</p> <p>22 discussion that they wanted to have.</p> <p>23 Q. And what about the culture?</p> <p>24 A. Pardon me?</p> <p>25 Q. What about culture?</p>
<p>50</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, that is not correct. I did not</p> <p>3 present it to the affirmative action officer</p> <p>4 immediately because, per the policy and its</p> <p>5 definitions, I did not consider anything that</p> <p>6 had happened to meet the definition terms</p> <p>7 that invoked the need to report to the</p> <p>8 affirmative action officer.</p> <p>9 Q. Okay. Let's keep going.</p> <p>10 "After my discussions with them, I</p> <p>11 contacted Kyle."</p> <p>12 So, you don't reach out to the</p> <p>13 affirmative action officer; but you reach out</p> <p>14 to Mr. Farmer --</p> <p>15 A. That's correct --</p> <p>16 Q. -- someone you supervise and someone</p> <p>17 who was intimately associated with the</p> <p>18 accessories that were used with Mr. Wang's</p> <p>19 collection, correct?</p> <p>20 A. Kyle was included in this meeting</p> <p>21 because he was the chair of the Fashion</p> <p>22 Design Department. This was his program and</p> <p>23 the concerns were coming from students in the</p> <p>24 program.</p> <p>25 Q. Okay.</p>	<p>50</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. There were concerns from the</p> <p>3 students that the culture was not positive</p> <p>4 for them. There were some students who I</p> <p>5 learned that day felt that there was a</p> <p>6 culture of overly -- sort of an overly</p> <p>7 critical culture in the studio and that there</p> <p>8 was a sort of harshness to the way in which</p> <p>9 they were treated and -- and that was --</p> <p>10 those were general -- general perceptions.</p> <p>11 Q. So, there was never a discussion</p> <p>12 about the program being bigoted and racist?</p> <p>13 A. The program itself being bigoted and</p> <p>14 racist?</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 Q. Oh, okay.</p> <p>18 MR. DRANOFF: Derek, before</p> <p>19 your next question can we just take</p> <p>20 five minutes?</p> <p>21 MR. SELLS: Yes, that's fine.</p> <p>22 (Whereupon, at 11:13 a.m. a brief</p> <p>23 recess was taken; after which, the</p> <p>24 proceeding continued at 11:21 a.m. as</p> <p>25 follows.)</p>

<p style="text-align: right;">53</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So, Dr. Davis, just to be clear you</p> <p>3 have sat through most of the depositions in</p> <p>4 the case, correct?</p> <p>5 A. I have sat through, I believe, four</p> <p>6 depositions --- three depositions in this</p> <p>7 case.</p> <p>8 Q. Got it.</p> <p>9 So you understand, as you sit here</p> <p>10 today, that one of the allegations that's</p> <p>11 been made about you with regard to my client,</p> <p>12 Marjorie Phillips, is that when she went to</p> <p>13 you with a complaint of race discrimination</p> <p>14 or even multiple complaints of race</p> <p>15 discrimination you did not report it to the</p> <p>16 affirmative action office, right, you</p> <p>17 understand that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Okay.</p> <p>20 So when I was talking to you earlier</p> <p>21 today and asking you questions earlier today</p> <p>22 about the different narratives between your</p> <p>23 lawsuit where you're trying to get money</p> <p>24 damages and defending against Ms. Phillips'</p> <p>25 complaints where you might have to pay money</p>	<p style="text-align: right;">55</p> <p>1 DAVIS, Ph.D.</p> <p>2 (Whereupon, the requested</p> <p>3 portion of the transcript was read</p> <p>4 back.)</p> <p>5 Q. Did you hear your answers?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Okay.</p> <p>8 So now you indicated that you didn't</p> <p>9 know whether your meeting with the students</p> <p>10 implicated the policy that required you to</p> <p>11 report the complaints to the affirmative</p> <p>12 action officer; is that right?</p> <p>13 MR. DRANOFF: Object to the</p> <p>14 form.</p> <p>15 A. I -- based on the definitions</p> <p>16 included in the policy, I did not believe</p> <p>17 that it -- it triggered my responsibility to</p> <p>18 report to the affirmative action officer.</p> <p>19 Q. Got it.</p> <p>20 And that is what you're saying</p> <p>21 today, right?</p> <p>22 A. Are you asking me do I believe that</p> <p>23 today?</p> <p>24 Q. Yes.</p> <p>25 A. I don't believe that the -- yes, I --</p>
<p style="text-align: right;">54</p> <p>1 DAVIS, Ph.D.</p> <p>2 damages, you're trying to walk a very fine</p> <p>3 line; isn't that correct?</p> <p>4 A. No, that is a mischaracterization I</p> <p>5 believe and is incorrect.</p> <p>6 Q. Got it --</p> <p>7 A. -- I'm hear to tell you --</p> <p>8 Q. Well --</p> <p>9 A. -- I'm here to tell you the truth.</p> <p>10 Q. Got it.</p> <p>11 So when you say you're here to tell</p> <p>12 me the truth, one of the things you just said</p> <p>13 was that when you met with these students</p> <p>14 that you didn't know whether they were</p> <p>15 complaining about the accessories as being</p> <p>16 uncomfortable or being racist in nature;</p> <p>17 isn't that what you said?</p> <p>18 A. No, I don't believe that's what I</p> <p>19 said.</p> <p>20 Q. What did you say?</p> <p>21 A. I said -- I believe that I said --</p> <p>22 actually the court reporter can read back</p> <p>23 what I said.</p> <p>24 MR. SELL: Okay. If we could</p> <p>25 just read back.</p>	<p style="text-align: right;">56</p> <p>1 DAVIS, Ph.D.</p> <p>2 I -- I am saying that today. I don't believe</p> <p>3 that --</p> <p>4 Q. So, you didn't --</p> <p>5 A. I --</p> <p>6 Q. -- just to be clear, you did not</p> <p>7 understand the students who you spoke to as</p> <p>8 raising issues of racial -- of a racial</p> <p>9 nature; is that right?</p> <p>10 A. The policy speaks specifically and</p> <p>11 defines specifically discrimination,</p> <p>12 discriminatory harassment and retaliation. I</p> <p>13 worked from the policy and it's definitions</p> <p>14 of those three categories.</p> <p>15 Q. Got it.</p> <p>16 And so the depiction of a person</p> <p>17 with big lips and the big ears and a</p> <p>18 student's belief that that's racially</p> <p>19 incentive and that they were offended in your</p> <p>20 view does not trigger the policy; is that</p> <p>21 correct?</p> <p>22 A. It did not -- it -- it did not</p> <p>23 correlate to the definitions included in the</p> <p>24 policy in a way that would have triggered the</p> <p>25 need to report to the affirmative action</p>

<p>1 DAVIS, Ph.D.</p> <p>2 officer; that is correct.</p> <p>3 Q. And that is your own reading of it;</p> <p>4 is that correct?</p> <p>5 A. The policy is clear. It is --</p> <p>6 Q. That is your definition? That is</p> <p>7 your definition --</p> <p>8 A. No, sir, it is not my definition --</p> <p>9 Q. Okay --</p> <p>10 A. -- it is my reading of the policy.</p> <p>11 Q. Got it.</p> <p>12 In your complaint --</p> <p>13 MR. SELLS: If we could put up</p> <p>14 Exhibit 59 again.</p> <p>15 (The image is shared on the</p> <p>16 computer screen.)</p> <p>17 MR. SELLS: If we could go to</p> <p>18 Paragraph 32. We'll start at 32.</p> <p>19 Q. Now, in your own lawsuit where you</p> <p>20 are seeking money damages -- by the way, how</p> <p>21 much money are you seeking --</p> <p>22 A. This is a defamation lawsuit, and it</p> <p>23 is -- I'm seeking 10 million dollars in</p> <p>24 damages.</p> <p>25 Q. 10 million?</p>	<p>57</p> <p>1 DAVIS, Ph.D.</p> <p>2 second year students in the fashion design</p> <p>3 MFA program e-mailed her. Dr. Davis promptly</p> <p>4 responded to the students, meeting with both</p> <p>5 of them the following day."</p> <p>6 That's what you sworn to --</p> <p>7 A. That's correct and consistent with</p> <p>8 my memo.</p> <p>9 Q. All right.</p> <p>10 So, I'm going to call for the</p> <p>11 production of the e-mails that you referenced</p> <p>12 in Paragraph 32. Do you still have those</p> <p>13 e-mails?</p> <p>14 A. I no longer have access to my F.I.T.</p> <p>15 e-mail.</p> <p>16 MR. SELLS: All right. So, I</p> <p>17 direct this request to F.I.T. Can</p> <p>18 you, please, provide us with those</p> <p>19 e-mails.</p> <p>20 MR. MELITO: Again, just follow</p> <p>21 up in writing, Derek.</p> <p>22</p> <p>23 MR. SELLS: Okay.</p> <p>24 Q. And then 33, the next paragraph you</p> <p>25 write, "Immediately after meeting with the</p>
<p>58</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Yes.</p> <p>3 Q. Why are you seeking 10 million</p> <p>4 dollars? What was it about F.I.T.'s actions</p> <p>5 and President Brown's actions that you feel</p> <p>6 defamed you?</p> <p>7 A. It's explained in the pages of the</p> <p>8 suit.</p> <p>9 Q. No, I am asking you.</p> <p>10 A. I'm telling you. It is explained</p> <p>11 thoroughly in the legal document.</p> <p>12 Q. Okay.</p> <p>13 But I am asking you --</p> <p>14 A. I'm not going to summarize for you</p> <p>15 beyond saying that this is a defamation suit</p> <p>16 against F.I.T. and President Brown in her</p> <p>17 capacity for -- for defaming.</p> <p>18 Q. In what way were you defamed?</p> <p>19 A. Every point -- every point in the</p> <p>20 legal papers speaks to that.</p> <p>21 Q. Got it. All right. So, let's look</p> <p>22 at Paragraph 32.</p> <p>23 "On or about February 11th,</p> <p>24 Dr. Davis was first alerted to student</p> <p>25 concerns about the fashion show when two</p>	<p>60</p> <p>1 DAVIS, Ph.D.</p> <p>2 students, recognizing the importance and time</p> <p>3 sensitivity of their concerns, Dr. Davis</p> <p>4 e-mailed her supervisor, VP Oliva. She</p> <p>5 alerted him that some students had expressed</p> <p>6 concerns that the use of certain accessories</p> <p>7 at the fashion show raised issues about</p> <p>8 F.I.T.'s lack of racial sensitivity."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Okay.</p> <p>12 And so, it's clear from your</p> <p>13 complaint that you knew that this was an</p> <p>14 important and sensitive issue, right?</p> <p>15 A. That's correct.</p> <p>16 Q. And you knew that because the</p> <p>17 students themselves said that the use of</p> <p>18 those accessories reflected on F.I.T.'s --</p> <p>19 F.I.T.'s lack of racial sensitivity, correct?</p> <p>20 A. I wrote that the students had</p> <p>21 expressed concerns that the use of certain</p> <p>22 accessories raised issues about F.I.T.'s lack</p> <p>23 of racial sensitivity --</p> <p>24 Q. Okay.</p> <p>25 So it's not about the fashion show,</p>

<p style="text-align: right;">61</p> <p>1 DAVIS, Ph.D.</p> <p>2 it's about how the use of the accessories at</p> <p>3 the fashion show raised issues about F.I.T.'s</p> <p>4 lack of racial sensitivity, right; the</p> <p>5 school's lack of racial sensitivity, that was</p> <p>6 what the complaint was, correct?</p> <p>7 A. The complaint was --</p> <p>8 MR. DRANOFF: Hold on there.</p> <p>9 I just want to object to the</p> <p>10 form, Derek.</p> <p>11 Go ahead.</p> <p>12 A. Let me put it this way. The</p> <p>13 concerns --</p> <p>14 Q. You already put it. It's already in</p> <p>15 the question. You wrote and you swore to it</p> <p>16 that you alerted VP Oliva that some students</p> <p>17 had expressed concerns that the use of</p> <p>18 certain accessories at the fashion show</p> <p>19 raised issues about F.I.T.'s lack of racial</p> <p>20 sensitivity, right, F.I.T.'s lack of racial</p> <p>21 sensitivity, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. That's what you wrote --</p> <p>24 A. That's correct.</p> <p>25 Q. And so, when you talk about a</p>	<p style="text-align: right;">63</p> <p>1 DAVIS, Ph.D.</p> <p>2 action officer?</p> <p>3 A. I return to the policy and it's</p> <p>4 categories of discrimination, discriminate</p> <p>5 harassment and retaliation. A lack of racial</p> <p>6 sensitivity in the definitional section of</p> <p>7 that policy, I don't consider it to -- I</p> <p>8 considered this sentence to be a broad</p> <p>9 representation in contrast to the specifics</p> <p>10 that are included in the policy.</p> <p>11 Q. Got it.</p> <p>12 So this is no big deal --</p> <p>13 A. No --</p> <p>14 Q. Wait. Wait. This is no big deal,</p> <p>15 you know, et cetera. Just a lack of racial</p> <p>16 sensitivity. Okay. We could all live with</p> <p>17 that. We don't need to have an investigation</p> <p>18 by the Affirmative Action Office. Even</p> <p>19 though it involves my own direct report, it</p> <p>20 is not problem --</p> <p>21 A. Mr. Sells --</p> <p>22 Q. -- is that what you are saying?</p> <p>23 A. No, that is a gross</p> <p>24 mischaracterization of what I --</p> <p>25 Q. Gross --</p>
<p style="text-align: right;">62</p> <p>1 DAVIS, Ph.D.</p> <p>2 complaint about the school's lack of racial</p> <p>3 sensitivity, that is something that directly</p> <p>4 impacts the policy and should directly go to</p> <p>5 the affirmative action officer, correct?</p> <p>6 A. I believe that's your opinion. I</p> <p>7 don't believe that it's correct. I think</p> <p>8 that --</p> <p>9 Q. When you talk about F.I.T.'s "lack</p> <p>10 of racial sensitivity," your school's, your</p> <p>11 employer's lack of racial sensitivity, which</p> <p>12 is a complaint about racial discrimination at</p> <p>13 the school, correct?</p> <p>14 A. Um. Mr. Sells, I would refer you,</p> <p>15 once, again to the definitional section --</p> <p>16 Q. You don't have to refer me to</p> <p>17 anything. I just want you to answer the</p> <p>18 question.</p> <p>19 A. I am answering the question.</p> <p>20 Q. Okay.</p> <p>21 So if someone complains to you and</p> <p>22 says, "You know, Dean Davis, I think the</p> <p>23 school lacks racial sensitivity;" you're</p> <p>24 saying that wouldn't invoke the policy that</p> <p>25 requires you to report it to the affirmative</p>	<p style="text-align: right;">64</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. -- am saying and what I have</p> <p>3 written. It is the fact that I am alerting</p> <p>4 my supervisor, the vice president for</p> <p>5 Academic Affairs, about this is an indication</p> <p>6 that we were all taking it quite seriously.</p> <p>7 Q. Oh, is that right? So let's look at</p> <p>8 the very next sentence. "VP Oliva replied to</p> <p>9 Dr. Davis by e-mail that he was too busy to</p> <p>10 discuss the matter that day."</p> <p>11 That's how serious you and your</p> <p>12 supervisor took it, right?</p> <p>13 A. Sir, I can tell you that my</p> <p>14 supervisor as I reported in these legal</p> <p>15 papers that he replied to me by e-mail that</p> <p>16 he was too busy to discuss it that day. That</p> <p>17 did not stop me from continuing to take it</p> <p>18 seriously.</p> <p>19 Q. Got it.</p> <p>20 So let's see how seriously you took</p> <p>21 it. You don't contact the Affirmative Action</p> <p>22 Office and say, hey, my supervisor is too</p> <p>23 busy to look at it. You do not contact HR.</p> <p>24 Instead, you take it upon yourself to get</p> <p>25 your direct supervisor, someone -- I mean,</p>

<p style="text-align: right;">65</p> <p>1 DAVIS, Ph.D.</p> <p>2 your direct report, right, someone who</p> <p>3 reports directly to you, under your</p> <p>4 supervision, you decide to bring him in so</p> <p>5 that he can hear the concerns about F.I.T.'s</p> <p>6 racial sensitivity, right?</p> <p>7 A. No. Once again, Kyle Farmer was in</p> <p>8 the meeting in his capacity as chairperson of</p> <p>9 the MFA Fashion Design Department. This was</p> <p>10 a departmental matter, and the students asked</p> <p>11 to meet with -- with us.</p> <p>12 Q. Okay.</p> <p>13 So, it's his responsibility, Mr. Farmer's</p> <p>14 responsibility to address issues of F.I.T.'s</p> <p>15 lack of racial sensitivity; is that what you</p> <p>16 are saying?</p> <p>17 A. Theses are two different -- you are</p> <p>18 two different issues, as you see in Paragraph</p> <p>19 33 of the document that we are looking at. I</p> <p>20 alerted Vice President Oliva of that concern.</p> <p>21 The student meeting was about numerous</p> <p>22 issues, including the culture in the MFA</p> <p>23 fashion design studio.</p> <p>24 Q. F.I.T.'s lack of racial sensitivity</p> <p>25 is what you wrote in your lawsuit papers,</p>	<p style="text-align: right;">67</p> <p>1 DAVIS, Ph.D.</p> <p>2 that want to meet and have you and Kyle</p> <p>3 Farmer address the issues about F.I.T.'s lack</p> <p>4 of racial sensitivity --</p> <p>5 MR. DRANOFF: Hold on, Marry.</p> <p>6 Q. -- do you see it in your papers?</p> <p>7 MR. DRANOFF: Hold on, Marry.</p> <p>8 Just objection to form.</p> <p>9 A. It is not relevant to my defamation</p> <p>10 suit.</p> <p>11 Q. No. I'm just asking you. Do you</p> <p>12 see it in your lawsuit papers that the</p> <p>13 students asked you to meet with them about</p> <p>14 their concerns?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 And we just went through your note</p> <p>18 of the February 18th meeting where you don't</p> <p>19 say in there that the students asked you to</p> <p>20 meet with them either, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So the only place that this comes up</p> <p>23 about how these students want to meet with</p> <p>24 you to talk about F.I.T.'s lack of racial</p> <p>25 sensitivity is from your own words, correct?</p>
<p style="text-align: right;">66</p> <p>1 DAVIS, Ph.D.</p> <p>2 right?</p> <p>3 A. What I wrote in my lawsuit paperers</p> <p>4 is that I alerted VP Oliva that some students</p> <p>5 expressed concerns that the use of certain</p> <p>6 accessories at the fashion show raised issues</p> <p>7 about F.I.T.'s lack of racial sensitivity.</p> <p>8 Q. Got it.</p> <p>9 And it was for you and Mr. Farmer to</p> <p>10 address these issues about F.I.T.'s lack of</p> <p>11 racial sensitivity with the students, right?</p> <p>12 A. No, it was not.</p> <p>13 Q. Okay.</p> <p>14 Let's go to the next paragraph.</p> <p>15 "Dr. Davis --" that's you "-- realizing that</p> <p>16 the students concerns warranted attention,</p> <p>17 spoke with Professor Farmer and arranged for</p> <p>18 a meeting with all of the second year fashion</p> <p>19 design MFA students to discuss these issues."</p> <p>20 You wrote that too, right or you</p> <p>21 swore to that too, correct?</p> <p>22 A. Yes, it --</p> <p>23 Q. Yes. Okay.</p> <p>24 So now I don't see anywhere in your</p> <p>25 lawsuit paper where the students said to you</p>	<p style="text-align: right;">68</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Once again, sir, the students asked</p> <p>3 to meet with me not about F.I.T.'s lack of</p> <p>4 racial sensitivity, but about their concerns</p> <p>5 that the use of certain accessories at the</p> <p>6 fashion show raised issues about F.I.T.'s</p> <p>7 lack of racial sensitivity.</p> <p>8 They raised concerns with me that</p> <p>9 were much broader and that had to do with the</p> <p>10 culture of the studio for the MFA fashion</p> <p>11 design program.</p> <p>12 Q. Got it.</p> <p>13 So how did the students say to you</p> <p>14 that we want to meet with you; how did they</p> <p>15 say that?</p> <p>16 A. When I met with the two students who</p> <p>17 e-mailed me, they both indicated that they</p> <p>18 wanted -- that they felt they wanted to have</p> <p>19 a meeting, they wanted to air their issues.</p> <p>20 Q. Okay.</p> <p>21 But you did not say that in any of</p> <p>22 your notes or any of your writings, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 So, what you write is, "Dr. Davis,</p>

<p style="text-align: right;">69</p> <p>1 DAVIS, Ph.D.</p> <p>2 realizing that the students concerns warranted</p> <p>3 attention --"</p> <p>4 Now, you didn't say, "Dr. Davis, in response</p> <p>5 to the students asking for a meeting, spoke</p> <p>6 with Professor Farmer and arranged for a</p> <p>7 meeting," right? You didn't write that, did</p> <p>8 you?</p> <p>9 A. No.</p> <p>10 Q. No. It was, "Dr. Davis, realizing</p> <p>11 that the students concerns warranted</p> <p>12 attention, spoke with Professor Farmer and</p> <p>13 arranged for meeting with all of the second</p> <p>14 year fashion design MFA students to discuss</p> <p>15 these issue," right?</p> <p>16 A. That's correct.</p> <p>17 Q. But today you're saying that these</p> <p>18 two students that you met with said, hey,</p> <p>19 let's have a meeting with the whole second</p> <p>20 year -- with all the second year students so</p> <p>21 we could discuss these issues; is that what</p> <p>22 you are saying?</p> <p>23 A. Yes --</p> <p>24 Q. Okay --</p> <p>25 A. -- those two things are not</p>	<p style="text-align: right;">71</p> <p>1 DAVIS, Ph.D.</p> <p>2 the narrative internally. You wanted to</p> <p>3 stamp out any possible student uprising that</p> <p>4 would lead to your termination, right?</p> <p>5 A. That is -- that is absolutely false.</p> <p>6 Q. Got it.</p> <p>7 Then following the meeting --</p> <p>8 because this is why you're speaking to your</p> <p>9 direct report because you know that he is the</p> <p>10 one that could pull the trigger on you and</p> <p>11 get you fired, right?</p> <p>12 A. I -- I -- I have lost you in this</p> <p>13 theory, Mr. --</p> <p>14 Q. No --</p> <p>15 A. -- I have lost you --</p> <p>16 Q. You have lost me. Okay.</p> <p>17 So following the meeting, you texted</p> <p>18 and briefed -- orally briefed your boss,</p> <p>19 Oliva, on the concerns expressed by students</p> <p>20 and then followed up with a detailed written</p> <p>21 memo, right? That's what you wrote?</p> <p>22 A. That's correct.</p> <p>23 Q. And that's what you did, right?</p> <p>24 A. Yes.</p> <p>25 MR. SELLS: Okay. Can we</p>
<p style="text-align: right;">70</p> <p>1 DAVIS, Ph.D.</p> <p>2 incompatible.</p> <p>3 Q. Got it.</p> <p>4 So the two students said we want</p> <p>5 everyone to meet with you, Dr. Davis, so you</p> <p>6 could just take us through and explain why</p> <p>7 F.I.T. is not being racially insensitive,</p> <p>8 right --</p> <p>9 A. No, I didn't say any of those</p> <p>10 things.</p> <p>11 Q. You didn't?</p> <p>12 A. No, I did not.</p> <p>13 Q. And that's because at this point you</p> <p>14 were trying to save your job and Mr. Farmer's</p> <p>15 job because all around you -- all around you</p> <p>16 the media was talking about how racist this</p> <p>17 fashion show was, including your own</p> <p>18 students, right?</p> <p>19 A. I think that is an</p> <p>20 mischaracterization and overgeneralization of</p> <p>21 a --</p> <p>22 Q. Okay -- okay --</p> <p>23 A. -- in time.</p> <p>24 Q. Got it.</p> <p>25 So what you wanted to do was control</p>	<p style="text-align: right;">72</p> <p>1 DAVIS, Ph.D.</p> <p>2 scroll up.</p> <p>3 Q. And you address it to him and to VP</p> <p>4 Glass, right?</p> <p>5 A. That's correct.</p> <p>6 Q. And neither director suggested that</p> <p>7 you take any further action?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay.</p> <p>10 But you didn't give it to the</p> <p>11 affirmative action officer, right?</p> <p>12 A. This issue by this time was not only</p> <p>13 with the vice president and senior leadership</p> <p>14 of F.I.T., but it was with the president's</p> <p>15 office directly.</p> <p>16 Q. Now, talking about this issue and</p> <p>17 about the different narratives, let me ask</p> <p>18 you --</p> <p>19 MR. SELLS: We can take down</p> <p>20 the document.</p> <p>21 Q. Let me ask you. You saw Ms. Glass's</p> <p>22 deposition yesterday, correct?</p> <p>23 A. I did.</p> <p>24 Q. You saw where she said she did not</p> <p>25 attend the fashion show; you saw that, right?</p>

<p>1 DAVIS, Ph.D.</p> <p>2 A. Yes, I thought that she had.</p> <p>3 Q. Okay.</p> <p>4 So in order to again give the</p> <p>5 different narrative and buildup your case for</p> <p>6 court where you could get the 10 million</p> <p>7 dollars you're looking for, you wanted to</p> <p>8 make it seem that the HR rep. who may have to</p> <p>9 pass on whether or not the accessories that</p> <p>10 your supervisor selected were racist you</p> <p>11 wanted to put her in the audience too,</p> <p>12 correct?</p> <p>13 MR. DRANOFF: Object to the</p> <p>14 form.</p> <p>15 A. That is -- actually, that is not</p> <p>16 correct --</p> <p>17 Q. No. Okay --</p> <p>18 A. I -- may I --</p> <p>19 MR. SELLS: Could we put backup</p> <p>20 Exhibit 59 and go to paragraph 24.</p> <p>21 (The image is shared on the</p> <p>22 computer screen.)</p> <p>23 Q. What you write in your sworn to</p> <p>24 complaint in paragraph 24 is, "Dr. Brown,</p> <p>25 members of her cabinet and Dr. Davis watched</p>	<p>73</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. According to her testimony.</p> <p>3 MR. SELLS: So, let's go to the</p> <p>4 last page of the document. Let's go</p> <p>5 to the verification.</p> <p>6 Q. "I am the plaintiff in the within</p> <p>7 action. I have read the foregoing Verified</p> <p>8 Complaint and know the contents thereof. The</p> <p>9 contents are true to my knowledge except as</p> <p>10 to matters therein stated to be alleged upon</p> <p>11 information and belief; and as to those</p> <p>12 matters, I believe them to be true."</p> <p>13 MR. SELLS: Now let's go back</p> <p>14 to paragraph 24 again.</p> <p>15 Q. Now, on paragraph 24 you don't</p> <p>16 allege on information and belief Cynthia</p> <p>17 Glass was present, right?</p> <p>18 MR. DRANOFF: Note my objection</p> <p>19 to the form.</p> <p>20 A. If Dr. Glass's testimony is correct,</p> <p>21 then this is an error.</p> <p>22 Q. Or it's a lie, correct? You could</p> <p>23 be lying --</p> <p>24 A. No, it's not.</p> <p>25 Q. Obviously, if you swear to tell the</p>
<p>74</p> <p>1 DAVIS, Ph.D.</p> <p>2 the show from the front rows of the venue.</p> <p>3 Cabinet members in the audience included VP</p> <p>4 Oliva, who has noted above was Dr. Davis'</p> <p>5 direct supervisor, Cynthia M. Glass, vice</p> <p>6 president for Human Resources Management and</p> <p>7 labor relations."</p> <p>8 You put that in there, correct?</p> <p>9 A. That was in error.</p> <p>10 Q. Oh. Okay. Okay. Got it.</p> <p>11 A. Allow me to finish, please --</p> <p>12 Q. But if we could go --</p> <p>13 MR. DRANOFF: Let her finish</p> <p>14 the answer, please.</p> <p>15 A. Allow me to finish my answer,</p> <p>16 please.</p> <p>17 Q. Sure, go ahead.</p> <p>18 A. I believe -- I believed that Dr. Glass</p> <p>19 was in the audience. She was invited. I did</p> <p>20 not control the invitation list, nor did I</p> <p>21 control any kind of admission to the fashion</p> <p>22 show. I believed her to have been there.</p> <p>23 That was a mistake, according to her test- --</p> <p>24 according to her testimony.</p> <p>25 Q. Mistake --</p>	<p>76</p> <p>1 DAVIS, Ph.D.</p> <p>2 truth and then it turns out that you get</p> <p>3 caught, then you could say, "Oh, it was an</p> <p>4 error." Or it's a lie, right?</p> <p>5 A. Is there a question?</p> <p>6 Q. Yes.</p> <p>7 A. I already explained. I believed</p> <p>8 that Dr. Glass was in the audience when this</p> <p>9 complaint was filed.</p> <p>10 Q. You believed, so you should have put</p> <p>11 on information and belief --</p> <p>12 A. Oh.</p> <p>13 Q. -- right?</p> <p>14 MR. DRANOFF: Object to the</p> <p>15 form.</p> <p>16 A. I believed that she was there.</p> <p>17 Q. No, you knew she was there because</p> <p>18 you swore to tell the truth on matters that</p> <p>19 appear in here. You said they are true. You</p> <p>20 swore to it that they are true; and as to</p> <p>21 matters that are mentioned on information and</p> <p>22 belief, you believed them to be true.</p> <p>23 And here you do not say "on</p> <p>24 information and belief." You say she was</p> <p>25 there, which under your own verification is a</p>

<p>1 DAVIS, Ph.D.</p> <p>2 lie itself; not true --</p> <p>3 A. You --</p> <p>4 Q. -- right?</p> <p>5 A. You may characterize it however</p> <p>6 you'd like.</p> <p>7 Q. Well, you used "on information and</p> <p>8 belief." You used it in your complaint,</p> <p>9 right?</p> <p>10 A. Again, yes, I did.</p> <p>11 Q. Okay.</p> <p>12 But for this paragraph, you said she</p> <p>13 was there --</p> <p>14 A. You can --</p> <p>15 Q. -- that turns out to be a lie,</p> <p>16 correct?</p> <p>17 MR. DRANOFF: Object to the</p> <p>18 form.</p> <p>19 A. You can --</p> <p>20 MR. DRANOFF: A mistake is not</p> <p>21 a lie, Bruce -- excuse me, Derek. If</p> <p>22 in fact it was a mistake even.</p> <p>23 Q. Now, you indicated that that Mr. Farmer</p> <p>24 received death threats; is that right?</p> <p>25 A. Yes, as did Mr. Thorne.</p>	<p>77</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Okay.</p> <p>3 So, again in paragraph 39, even</p> <p>4 though you did not see the death threats</p> <p>5 yourself, you swear that they were -- that</p> <p>6 they happened, correct?</p> <p>7 A. I'm just reading the paragraph.</p> <p>8 I would need to refresh my memory on</p> <p>9 whether I saw the e-mail -- an e-mail from</p> <p>10 Richard Thorne regarding death threats. I</p> <p>11 believe -- I believe I saw an e-mail</p> <p>12 regarding that from Mr. Thorne.</p> <p>13 Q. Oh. So you're changing your</p> <p>14 testimony again when you don't put it in on</p> <p>15 information and belief and you actually swear</p> <p>16 to it, now all of a sudden -- whereas before</p> <p>17 you said, Oh, I didn't see them. They just</p> <p>18 told me about them.</p> <p>19 But now when you get called to the</p> <p>20 carpet on them you say, Oh, wait. Wait.</p> <p>21 Maybe I did see it. Maybe I did see it --</p> <p>22 A. I --</p> <p>23 Q. -- do you see?</p> <p>24 MR. DRANOFF: Object to the</p> <p>25 form.</p>
<p>78</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Who did these death threats come</p> <p>3 from?</p> <p>4 A. I do not know.</p> <p>5 Q. What did F.I.T. do in response to</p> <p>6 the death threats?</p> <p>7 A. I do not know.</p> <p>8 Q. Well, how do you know they got the</p> <p>9 death threats?</p> <p>10 A. Because both of them in -- I'm</p> <p>11 trying to think if it was in meetings or -- I</p> <p>12 believe it was with Mr. Thorne in e-mails</p> <p>13 indicated that he had received death threats.</p> <p>14 Kyle Farmer reported not just to me but to</p> <p>15 others that he had received death threats on</p> <p>16 social media.</p> <p>17 Q. And why? What were the death</p> <p>18 threats for?</p> <p>19 A. I did not see them; so I cannot</p> <p>20 speak to them.</p> <p>21 Q. Okay.</p> <p>22 But you just believe them; you just</p> <p>23 believe whatever they told you, correct?</p> <p>24 A. I have -- I'm just reporting what</p> <p>25 they said.</p>	<p>80</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Do you see what you are doing?</p> <p>3 MR. DRANOFF: Object to the</p> <p>4 form.</p> <p>5 Q. Do you see how you are trying to</p> <p>6 walk this fine line between trying to get 10</p> <p>7 million dollars and how you are trying to</p> <p>8 defend against lawsuit, right?</p> <p>9 A. This is --</p> <p>10 MR. DRANOFF: Just one second.</p> <p>11 This objection is based on</p> <p>12 harassment.</p> <p>13 Go on, Mary.</p> <p>14 A. Mr. Sells, I am trying to answer</p> <p>15 your questions as thoroughly as I possibly</p> <p>16 can. I will need or would need to see</p> <p>17 documents from Richard Thorne to recall if</p> <p>18 this paragraph was based on seeing an e-mail</p> <p>19 from him or if it was based on reporting from</p> <p>20 him or others.</p> <p>21 I do know that he reported --</p> <p>22 Mr. Thorne reported death -- that he had had</p> <p>23 death threats.</p> <p>24 Q. Okay --</p> <p>25 A. Also, may I ask you --</p>

	81		83
1	DAVIS, Ph.D.	1	DAVIS, Ph.D.
2	Q. No. --	2	A. I'm answering it.
3	MR. DRANOFF: No. No. No.	3	Q. So, you need to see the document to
4	No. Don't --	4	know whether or not you alleged that
5	Q. You have to answer. You cannot just	5	Dr. Brown lied?
6	go on with what you want to say.	6	A. I need to know if I used that word.
7	Now, Dr. Davis, you allege broadly	7	Q. And what happens if you didn't?
8	that President Brown, in conjunction with	8	A. I just need to know whether I did.
9	trying to defend F.I.T.'s reputation, crafted	9	If you're -- if you're saying -- if you're
10	a false narrative about how F.I.T. was not	10	putting those words in my mouth, I would like
11	acting in a racist way, but rather that you	11	to see them particularly since we have the
12	and Mr. Farmer were responsible; isn't that	12	document up in front of us.
13	right?	13	Q. So, you don't know whether or not
14	A. No, that is a mischaracterization of	14	Dr. Brown lied; is that correct?
15	my lawsuit.	15	A. I am not sure what you are referring
16	Q. I see.	16	to, if you are referring to a specific
17	So, you didn't say that President	17	instance or whether you are referring to a
18	Brown lied?	18	general instance.
19	A. I'm --	19	Also, I'm not sure if you are
20	MR. DRANOFF: Object to the	20	referring to language in this lawsuit or
21	form.	21	something else. So I need for you to clarify
22	A. I'm -- can you -- can you -- can you	22	those points for me, please.
23	clarify that question to -- to give me a time	23	Q. What is your understanding of
24	or a document to which that relates.	24	"defamation"?
25	Q. No. I am asking you a question.	25	MR. DRANOFF: Object to the
	82		84
1	DAVIS, Ph.D.	1	DAVIS, Ph.D.
2	A. No, I can't --	2	form. She is not a lawyer.
3	Q. Did you allege that Dr. Brown lied	3	A. Yup, I'm not a lawyer. My --
4	in blaming you in part for the clearly racist	4	Q. I asked what your understanding of
5	fashion show?	5	"defamation" is?
6	A. Are you referring to -- these are --	6	A. "Defamation" is -- see, I actually
7	does your question go to whether I made that	7	can't answer that question; because I know
8	statement in this legal paper, in this	8	what it is and how it is being used regarding
9	lawsuit?	9	me and in my case.
10	Q. Yes. I'm saying it.	10	But I can't speak to the legal
11	A. So let's take a look, as long as we	11	principle of defamation or the broader issues
12	have the document up, if you could show me	12	around it.
13	what you are referring to that would be very	13	Q. Okay.
14	helpful.	14	Well, why do you think you were
15	Q. No. I am asking you as you sit here	15	defamed?
16	now, did you allege that Dr. Brown lied in	16	A. I think I was defamed because I was
17	creating a false narrative about how the	17	used, as I have said in other legal papers,
18	racist fashion show was done?	18	as a scapegoat in this case when F.I.T.
19	MR. DRANOFF: Object to the	19	wished to blame someone for what happened at
20	form.	20	the fashion show for the -- for the use of
21	A. I don't recall if I used the word	21	accessories that were assumed to be racist by
22	"lie" in this document. That is why I would	22	some people and reported in the press as
23	like to see the language that you are	23	being racist.
24	referring to.	24	I think F.I.T. wanted to blame --
25	Q. I'm asking you a question.	25	wanted to place blame on me for that unfairly

	85		87
1	DAVIS, Ph.D.	1	DAVIS, Ph.D.
2	and improperly.	2	Q. Do you think that's what F.I.T. and
3	Q. That's your understanding of your	3	Dr. Brown did here, they made a false
4	lawsuit; that you were made a scapegoat?	4	statement that could have been a mistake and
5	A. That is part of my lawsuit, yes.	5	not really been a lie; is that correct?
6	Q. Okay.	6	A. No, that -- that is not if case in --
7	I don't understand that as being	7	in this situation.
8	defamation. Tell me how that's defamation?	8	Q. So, you think that the false
9	MR. DRANOFF: Object, and she	9	statements that Dr. Brown and F.I.T. made
10	is not going to testify about that	10	were lies, correct?
11	cases allegations from a legal	11	A. Once again, I would want to see the
12	perspective, Derek. That's why --	12	language in the suit to -- to affirm that the
13	MR. SELL: I'm asking her --	13	word "lie," is used in the legal documents.
14	Q. Did you authorize a suit, a 10	14	MR. SELLS: I would like to go
15	million dollar suit for defamation?	15	to page 24.
16	A. I did.	16	Q. This is the second claim in your
17	Q. So, you're saying you authorized a	17	lawsuit, right?
18	10 million dollar lawsuit for defamation, you	18	A. Yes.
19	signed a verification stating that everything	19	Q. What you allege is that "Defendant's
20	in the complaint is true, but you don't	20	statements regarding Dr. Davis were false and
21	understand what "defamation" is; is that	21	defamatory in multiple ways." There is a
22	correct?	22	whole list. "The false claim is that
23	MR. DRANOFF: Object to the	23	Dr. Davis was in charge of and responsible
24	form.	24	for overseeing the show."
25	Derek, again, you are asking	25	Right, that is one thing you said
	86		88
1	DAVIS, Ph.D.	1	DAVIS, Ph.D.
2	her legal opinions and that is not an	2	F.I.T. and Dr. Brown lied about, right?
3	appropriate question.	3	MR. DRANOFF: Object to the
4	Q. Okay.	4	form.
5	So, Dr. Davis, just so I'm clear,	5	Derek, these are specific legal
6	you don't know whether or not you are	6	allegations in the complaint relating
7	accusing Dr. Brown and other people at F.I.T.	7	to defamation. They will be taken on
8	of lying as part of your lawsuit; is that	8	the face of what they are in the
9	correct?	9	context of that particular pleading.
10	A. I, again, am concerned about your	10	This is far beyond Dr. Davis's
11	use of the word "lie" in -- in connection	11	ability to interpret the nuisances of
12	with this.	12	the actual legal principles involved.
13	Q. Okay.	13	The document says what it says,
14	Well, would you consider someone	14	and I think we should put an end to
15	making a false statement to be a lie?	15	this inquire. I'll let you go a
16	A. Not necessarily.	16	little longer, but it's getting
17	Q. Okay.	17	beyond what is appropriate.
18	So, tell me what situation would	18	MR. SELLS: I think you will
19	someone making a false statement about you not	19	see where I'm going, Eric.
20	be a lie?	20	MR. DRANOFF: All right. I'm a
21	A. Someone could make an honest mistake	21	patient man.
22	and say something that wasn't factually true.	22	MR. SELLS: All right.
23	That is --	23	Q. So, one of the things that F.I.T.
24	Q. Did --	24	did was lie about you being in charge of and
25	A. -- that is different -- go ahead.	25	responsible for overseeing the show?

<p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Continued</p> <p>3 objection --</p> <p>4 Q. Is that right?</p> <p>5 A. As stated in the document, they made</p> <p>6 a false claim.</p> <p>7 Q. Okay.</p> <p>8 So, you don't think it was just a</p> <p>9 mis-statement of fact or an opinion on their</p> <p>10 part, right?</p> <p>11 MR. DRANOFF: Again, Derek, you</p> <p>12 are asking her things of legal</p> <p>13 significance within the context of</p> <p>14 her defamation --</p> <p>15 MR. SELLS: No, I'm not.</p> <p>16 MR. DRANOFF: When you are</p> <p>17 talking about an opinion that relates</p> <p>18 directly to the defamation case --</p> <p>19 MR. SELLS: No. No, you will</p> <p>20 see where I'm going. Just hear me</p> <p>21 out.</p> <p>22 MR. DRANOFF: I'm hearing you</p> <p>23 out, but --</p> <p>24 MR. SELLS: I'm just trying to</p> <p>25 figure out whether your client</p>	<p>89</p> <p>1 DAVIS, Ph.D.</p> <p>2 about. But maybe I'm -- maybe I</p> <p>3 missed it. But anyway I'll ask.</p> <p>4 Q. Is part of your claim, Dr. Davis,</p> <p>5 that F.I.T. lied about your involvement with</p> <p>6 this show?</p> <p>7 A. As you see here in the claim, I</p> <p>8 assert that they made false claims about my</p> <p>9 role.</p> <p>10 Q. Okay.</p> <p>11 But you just said that when you say</p> <p>12 "false claims," that it might not be a lie.</p> <p>13 It might be a mistake, and I'm trying to</p> <p>14 understand what your allegation is.</p> <p>15 Are you saying that they mistakenly</p> <p>16 made a false claim, or are you saying that</p> <p>17 they affirmatively created a lie so as to</p> <p>18 scapegoat you and avoid negative publicity on</p> <p>19 them?</p> <p>20 MR. DRANOFF: You know what,</p> <p>21 Derek, I think I can make this easier</p> <p>22 for you. If you scroll down, it may</p> <p>23 be allegations regarding the</p> <p>24 nature -- specific nature of that</p> <p>25 conduct. All right? I don't want</p>
<p>90</p> <p>1 DAVIS, Ph.D.</p> <p>2 believes in the lawsuit that she</p> <p>3 filed. I mean, it's really simple to</p> <p>4 me that defamation means that someone</p> <p>5 lied and said something that is not</p> <p>6 true that was harmful to one's</p> <p>7 reputation. I'm just --</p> <p>8 MR. DRANOFF: Well, that's --</p> <p>9 MR. SELLS: It's a question. I</p> <p>10 would think she would say yes, that's</p> <p>11 a lie.</p> <p>12 MR. DRANOFF: That is where the</p> <p>13 misstep is, Derek. In a defamation</p> <p>14 case --</p> <p>15 MR. SELLS: Okay --</p> <p>16 MR. DRANOFF: -- something does</p> <p>17 not have to be a lie.</p> <p>18 MR. SELLS: I understand it.</p> <p>19 I'm asking her for her -- these are</p> <p>20 her own allegations. I'm just asking</p> <p>21 her whether she believes that she was</p> <p>22 defamed because, you know, F.I.T.</p> <p>23 created a lie about what happened so</p> <p>24 that she could be scapegoated. I</p> <p>25 thought that's what this lawsuit was</p>	<p>91</p> <p>1 DAVIS, Ph.D.</p> <p>2 her paraphrasing.</p> <p>3 MR. SELLS: All right. I got</p> <p>4 you.</p> <p>5 Q. So, we have all the list of false</p> <p>6 claims here, right? Let's talk about those.</p> <p>7 That F.I.T., they said falsely that</p> <p>8 you were "in charge of and responsible for</p> <p>9 overseeing the show," correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you say that another false claim</p> <p>12 that F.I.T. and Dr. Brown made was that you</p> <p>13 provided accessories at issue to a student;</p> <p>14 is that right?</p> <p>15 A. Correct.</p> <p>16 Q. And they also, Dr. Brown and F.I.T.,</p> <p>17 claim that it was obvious to everyone, except</p> <p>18 for you and Kyle Farmer, that the accessories</p> <p>19 were racist, right?</p> <p>20 A. Correct.</p> <p>21 Q. They also made the false claim --</p> <p>22 and again, by they I mean Dr. Brown and</p> <p>23 F.I.T. -- that by providing accessories to a</p> <p>24 student or failing to stop their inclusion in</p> <p>25 the fast, you failed to recognize or</p>
<p>92</p>	

<p style="text-align: right;">93</p> <p>1 DAVIS, Ph.D.</p> <p>2 anticipate the racist references or cultural</p> <p>3 insensitivities obvious to everyone else,</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. And you made the claim that Dean Brown</p> <p>7 and F.I.T. made the false claim your actions</p> <p>8 and inactions were failures that were</p> <p>9 inexcusable and irresponsible, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you also made the allegation</p> <p>12 that F.I.T., through it's President and</p> <p>13 others, made the false claim that you were</p> <p>14 not fit to be dean of the School of Graduate</p> <p>15 Studies, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you also make the claim that</p> <p>18 Dr. Brown and F.I.T. and those that were</p> <p>19 involved in creating the statement said that</p> <p>20 your actions and inactions constituted</p> <p>21 inexcusable and irresponsible failures</p> <p>22 demonstrating that you are a racist and unfit</p> <p>23 to be dean; is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that you and -- that President</p>	<p style="text-align: right;">95</p> <p>1 DAVIS, Ph.D.</p> <p>2 so that they could cover up their own</p> <p>3 involvement in a racist fashion show; is that</p> <p>4 right?</p> <p>5 A. No, that is not right.</p> <p>6 And also, looking again at the</p> <p>7 language in Number 83, it's very specific;</p> <p>8 and again, I'm not an attorney, but it's --</p> <p>9 it's purposeful in saying that they</p> <p>10 "published the false statements knowing they</p> <p>11 were false."</p> <p>12 I'm not sure because I don't have a</p> <p>13 dictionary in front of me, I'm not sure if</p> <p>14 that meets the definition of a lie. That</p> <p>15 seems to me like very specific and very</p> <p>16 purposeful.</p> <p>17 Q. Well, I'm not asking you for your</p> <p>18 legal definition.</p> <p>19 A. Well, you're asking me to --</p> <p>20 Q. I'm just asking your opinion. Do</p> <p>21 you think it was a lie? Do you think it was</p> <p>22 a lie? And if you are saying you don't know,</p> <p>23 then okay --</p> <p>24 A. I --</p> <p>25 Q. -- you don't know. All right --</p>
<p style="text-align: right;">94</p> <p>1 DAVIS, Ph.D.</p> <p>2 Brown and F.I.T., their claim that an</p> <p>3 independent investigation would uncover how</p> <p>4 and why you and Professor Farmer failed to</p> <p>5 recognize or anticipate the racist references</p> <p>6 and cultural insensitivities that were</p> <p>7 obvious to everyone else was another false</p> <p>8 claim; is that right?</p> <p>9 A. That is correct.</p> <p>10 Q. Then if we go further, you say that --</p> <p>11 MR. DRANOFF: I think you are</p> <p>12 looking for paragraph --</p> <p>13 MR. SELLS: 84.</p> <p>14 MR. DRANOFF: -- 83 and 84.</p> <p>15 Q. "Defendants published a false</p> <p>16 statement about Dr. Davis knowing they were</p> <p>17 false."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And that would constitute a lie; is</p> <p>21 that correct?</p> <p>22 A. That would constitute a lie.</p> <p>23 Q. Okay.</p> <p>24 So your allegations are that F.I.T.</p> <p>25 and Dr. Brown, the president, lied about you</p>	<p style="text-align: right;">96</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, that is not my answer, sir. My</p> <p>3 answer is that there is a difference between</p> <p>4 saying something and publishing something</p> <p>5 that's false with knowledge that it's false</p> <p>6 and lying.</p> <p>7 MR. DRANOFF: Again, let me</p> <p>8 object. The pleadings say what the</p> <p>9 pleadings say for whatever particular</p> <p>10 legal significance they have. This</p> <p>11 is not a deposition in her defamation</p> <p>12 action.</p> <p>13 MR. SELLS: Okay.</p> <p>14 Q. The point though is -- well, let me</p> <p>15 ask you this --</p> <p>16 MR. SELLS: We can take down</p> <p>17 the document.</p> <p>18 Q. Who worked with Dr. Brown to create</p> <p>19 these false statements about you?</p> <p>20 A. I can't say for certain.</p> <p>21 Q. Well, you said that when the media</p> <p>22 started getting mobilized about this storey,</p> <p>23 how F.I.T. put on this racist fashion show,</p> <p>24 that you were part of a team with the</p> <p>25 President that met multiple times to figure</p>

<p style="text-align: right;">97</p> <p>1 DAVIS, Ph.D.</p> <p>2 out a strategy on how to deal with these</p> <p>3 issues; is that right?</p> <p>4 A. That's correct.</p> <p>5 First of all, though, I would like</p> <p>6 to just --</p> <p>7 Q. Well, no. No. You can't just talk.</p> <p>8 You have to answer the questions, all right.</p> <p>9 I get it. You want to get your word out and</p> <p>10 your lawyer can ask you questions at the end,</p> <p>11 if he would like. But just answer my</p> <p>12 questions.</p> <p>13 So when you had these meetings, who</p> <p>14 was part of that team that was responding to</p> <p>15 this? Just tell me who they were.</p> <p>16 A. Loretta Keane, the Vice President</p> <p>17 for Communications and External Relations.</p> <p>18 Jennifer Loturco, L-O-T-U-R-C-O, who was the</p> <p>19 deputy to the President. It's possible that</p> <p>20 Alex Mann, the communication specialist, was</p> <p>21 in one of those meetings. Mann with two Ns.</p> <p>22 I cannot recall if Vice President</p> <p>23 Oliva was in one or more of those meetings.</p> <p>24 I think that's it.</p> <p>25 Q. What about VP Glass, was she in</p>	<p style="text-align: right;">99</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Tell me about that meeting.</p> <p>3 A. As I recall, Kyle was asked by Vice</p> <p>4 President Keane about Jung Ki's accessories.</p> <p>5 He explained his role, as I have explained it</p> <p>6 already; and as I recall, it was at Vice</p> <p>7 President Keane's suggestion that Kyle worked</p> <p>8 on a statement that he published taking</p> <p>9 responsibility for the use of the</p> <p>10 accessories.</p> <p>11 Q. All right.</p> <p>12 So, as you sat there and you</p> <p>13 listened first to what you claimed Mr. Farmer</p> <p>14 said, which was I didn't select those</p> <p>15 accessories, Vice President Keane still said</p> <p>16 to Mr. Farmer that he should take</p> <p>17 responsibility; is that right?</p> <p>18 A. I don't recall the exact words that</p> <p>19 were used in that meeting; but that was being</p> <p>20 part of the meeting as I recall.</p> <p>21 Q. So, you sat there and you witnessed</p> <p>22 F.I.T. trying to come up with a false</p> <p>23 narrative that somehow Mr. Farmer should take</p> <p>24 responsibility for something that he claims</p> <p>25 he did not do --</p>
<p style="text-align: right;">98</p> <p>1 DAVIS, Ph.D.</p> <p>2 those meetings?</p> <p>3 A. I'm trying to recall. I don't know.</p> <p>4 I don't recall.</p> <p>5 Q. In those meetings that you attended,</p> <p>6 no one indicated that you had any</p> <p>7 responsibility for the fashion show; isn't</p> <p>8 that right?</p> <p>9 A. Those meetings were about</p> <p>10 communication strategy. They were not about</p> <p>11 identifying responsibility for the show as I</p> <p>12 recall it.</p> <p>13 Q. Well in your complaint, what you</p> <p>14 allege is that at the behest of the</p> <p>15 administration -- and we read through this --</p> <p>16 Professor Farmer, Kyle Farmer, and Thornn</p> <p>17 publicly took responsibility for the</p> <p>18 decisions that had been made with respect to</p> <p>19 the accessories; isn't that right?</p> <p>20 A. I did.</p> <p>21 Q. So is that something that was</p> <p>22 discussed in the these meetings that you</p> <p>23 attended?</p> <p>24 A. I was in one meeting where Kyle's</p> <p>25 apology was discussed.</p>	<p style="text-align: right;">100</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Object to the</p> <p>3 form --</p> <p>4 Q. -- is that right?</p> <p>5 A. No, that is not right. I don't</p> <p>6 believe it was a false narrative. I believe</p> <p>7 that Kyle -- and you would need to speak to</p> <p>8 him about this -- but I think that the issue</p> <p>9 was, again, an issue related to term --</p> <p>10 terminology and responsibility was the word</p> <p>11 that was at issue there.</p> <p>12 Because Mr. Thornn was a contract</p> <p>13 employee and not an in-house employee at</p> <p>14 F.I.T., I believe that -- well, I'll just</p> <p>15 leave it there. Mr. Thornn was a contract</p> <p>16 employee.</p> <p>17 Q. So, I'm not following you.</p> <p>18 You said earlier that Mr. Farmer had</p> <p>19 no role in the selection of the accessories --</p> <p>20 A. No, sir.</p> <p>21 Q. -- is that right?</p> <p>22 A. No, sir, that is not correct.</p> <p>23 Q. So, he did have a role?</p> <p>24 A. I explained his role. I -- I -- as</p> <p>25 I said before, Jung Ki Wang reached out to</p>

<p style="text-align: right;">101</p> <p>1 DAVIS, Ph.D.</p> <p>2 Kyle Farmer as he was trying to complete the 3 preparations for the fashion show and had not 4 finalized the designs that he intended to use 5 as accessories. He asked Mr. Farmer for 6 recommendations on how he could address the 7 problem.</p> <p>8 Mr. Farmer went to Amazon, pulled up 9 some websites for -- from Amazon and sent the 10 list to Mr. Wang who then selected the 11 accessories.</p> <p>12 Q. So, how did Kyle Farmer have 13 anything, any responsibility in what 14 accessories Mr. Wang chose if he just --</p> <p>15 MR. DRANOFF: One second. One 16 second --</p> <p>17 Q. -- if he --</p> <p>18 MR. DRANOFF: Lesley, can you 19 read that back.</p> <p>20 (Whereupon, the requested 21 portion of the transcript was read 22 back.)</p> <p>23 Q. -- if he just sent Mr. Wang some 24 websites from which to choose whatever 25 accessories he ultimately chose?</p>	<p style="text-align: right;">103</p> <p>1 DAVIS, Ph.D.</p> <p>2 narrative is accurate. And secondly, Kyle 3 Farmer did provide a list from which Mr. Wang 4 worked. So Kyle Farmer was in fault in the 5 selection of the accessories to that extent.</p> <p>6 Q. Okay.</p> <p>7 So, he did have involvement?</p> <p>8 A. As I have explained, yes.</p> <p>9 Q. Got it --</p> <p>10 A. Not in the selection, but in 11 providing a list from which Mr. Wang 12 selected.</p> <p>13 Q. Now, you also took offense at 14 Dr. Brown's public statement that you contend 15 contained false allegations about you and 16 your role in this; is that correct?</p> <p>17 A. I don't know which statement you are 18 referring to.</p> <p>19 Q. Well, you were the one who claims to 20 be defamed, right?</p> <p>21 A. Are you referring to her public 22 statement of February 21, 2020?</p> <p>23 Q. Well, you tell me. You tell me. 24 Which one did you --</p> <p>25 A. You --</p>
<p style="text-align: right;">102</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I can't speak for Kyle and what he 3 did or did not feel. But he did provide the 4 list from which Jung Ki selected.</p> <p>5 Q. Okay.</p> <p>6 So you thought that the 7 administration or VP Keane saying to Mr. Farmer, 8 "We want you to write a public apology for ---" 9 as you put in your complaint "-- for the 10 decisions that had been made with respect to 11 the accessories" was perfectly okay, right?</p> <p>12 A. I'm not sure what you mean that I 13 thought it was perfectly okay.</p> <p>14 Q. Well, you didn't complain about it, 15 did you?</p> <p>16 A. I don't recall complaining about it.</p> <p>17 Q. Yes. And you didn't say, "Oh, my 18 goodness. You know, why are you trying to 19 create this false narrative when in fact 20 Mr. Farmer didn't have anything to do with 21 the selection of the accessories? He only 22 provided a list from which the selections 23 could be made."</p> <p>24 A. So I -- I -- I don't believe that 25 your characterization of this as a false</p>	<p style="text-align: right;">104</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. -- that you felt defamed about?</p> <p>3 A. That is -- that statement from 4 February 21st, 2020 is the statement at issue 5 in the lawsuit.</p> <p>6 Q. Okay.</p> <p>7 So what about that statement was 8 false?</p> <p>9 A. Again, the question of things being 10 false and the way in which they added up to 11 being defamatory is the subject of the entire 12 lawsuit. And so it is complicated and it is 13 fully explained in the document that you 14 have.</p> <p>15 Q. Okay. Let's talk about that and how 16 you characterize it in your lawsuit papers.</p> <p>17 Again, as you try and parse through 18 whether it's a lie or false statement. Let's 19 talk about --</p> <p>20 MR. SELL: If we could go back 21 to Exhibit 59 and just starting with 22 paragraph 48.</p> <p>23 Q. So, this is the way you swear to it 24 in your complaint. First you say, 25 "Dr. Brown's statement was false and can be</p>

<p style="text-align: right;">105</p> <p>1 DAVIS, Ph.D. 2 proven to be false in at least three material 3 ways.</p> <p>4 First, Dr. Brown's statement was 5 false in asserting that Dr. Davis, the dean 6 of the School of Graduate Studies, was in 7 charge of and responsible for overseeing the 8 content of the show, including the choice of 9 accessories; and that she failed in those 10 professional responsibilities.</p> <p>11 As set forth above, that statement 12 was completely untrue and that Dr. Davis had 13 no responsibility and there for could not 14 have failed in the discharge of those 15 duties."</p> <p>16 Right? That's one thing that you 17 put if your lawsuit, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Then in Paragraph 49 you say, "Next, 20 Dr. Brown's statement that almost everyone, 21 i.e. except Dr. Davis and Professor Farmer, 22 recognized the obvious racist references and 23 cultural insensitivities in the accessories 24 was false."</p> <p>25 I'm going to just stop there for a</p>	<p style="text-align: right;">107</p> <p>1 DAVIS, Ph.D. 2 neither Dr. Brown nor a single member of her 3 cabinet nor any of the F.I.T. foundational 4 board of trustees who attended the show 5 voiced any such reaction, nor had the vast 6 majority of the spectators who attended it 7 the fashion show or watched the video 8 online."</p> <p>9 I see. So is what you are saying 10 that in fact most people who looked at the 11 accessories on Wang's -- from Wang's fashions 12 did not find those accessories to be racially 13 offensive; is that what you are saying?</p> <p>14 MR. DRANOFF: Object to the 15 form.</p> <p>16 A. No, it doesn't say that they didn't 17 feel that way. It says they did not voice 18 any such reaction.</p> <p>19 Q. Got it.</p> <p>20 So in other words, you're saying 21 that since Dr. Brown nor the F.I.T. 22 foundation or board of trustees nor a single 23 member of her cabinet had this reaction at 24 the time that the fashion show took place, 25 that their subsequent statement, this</p>
<p style="text-align: right;">106</p> <p>1 DAVIS, Ph.D. 2 second. When you say that was false, what 3 about that statement was false?</p> <p>4 A. I --</p> <p>5 MR. DRANOFF: Objection.</p> <p>6 Again, Derek, you are asking 7 questions concerning her defamation 8 claim.</p> <p>9 MR. SELLS: No, I'm just trying 10 to figure out what -- what's false 11 about that.</p> <p>12 Q. When you say, "Dr. Brown's statement 13 that almost everyone, i.e. except Dr. Davis 14 and Professor Farmer, recognized it the 15 obvious racist references and cultural 16 insensitivities --" both of which are in 17 quotations "-- in the accessories was false."</p> <p>18 And so --</p> <p>19 MR. DRANOFF: I think the rest 20 of the context to that is expressed 21 in that paragraph.</p> <p>22 Q. Okay. So it declares as a factual 23 matter that the accessories referred to 24 racial tropes and were culturally 25 insensitive. "However, as set forth above,</p>	<p style="text-align: right;">108</p> <p>1 DAVIS, Ph.D. 2 statement, of the 21st wherein the alleged 3 that almost everyone knew it to be racist at 4 the time except for you and Mr. Farmer was 5 untrue, right?</p> <p>6 A. I'm just -- I'm pausing because of 7 the phrase "any such reaction" can you repeat 8 your question just so I can understand --</p> <p>9 Q. You know what. I will rephrase it 10 this way. I will take that question back --</p> <p>11 A. Okay.</p> <p>12 Q. What you are saying is in this 13 paragraph that President Brown made the false 14 allegation that at the time of the fashion 15 show when Mr. Wang's fashions were coming out 16 with those accessories that she and the board 17 of trustees and her cabinet believed it to be 18 racist when in fact at the time they did not 19 believe it to be racist; is that accurate?</p> <p>20 A. I can't speak to belief. I think 21 that the word that's used in her statement, 22 which I believe if you scroll up and we could 23 even look at, is "recognized," not believed.</p> <p>24 Q. Okay, "recognized."</p> <p>25 But either way, you believed that</p>

<p style="text-align: right;">109</p> <p>1 DAVIS, Ph.D. 2 that statement was false — knowingly false, 3 correct? 4 A. Yes, I did. 5 Q. Okay. 6 In Paragraph 51 you also say, 7 "Dr. Brown's statement that F.I.T. was 8 commissioning an independent investigation to 9 uncover how and why Dr. Davis and Professor 10 Farmer failed to recognize or anticipate the 11 racist references and cultural 12 insensitivities that were obvious to almost 13 everybody else was designed to show that she, 14 Dr. Brown, was taking affirmative steps to 15 prevent more racist events in the future. 16 The reason given for that 17 investigation, however, was predicated on a 18 lie that Dr. Davis had been involved in the 19 selection or approval of the accessories or 20 the pressuring of the models to wear them 21 when F.I.T. already knew that Dr. Davis had 22 no such role, authority or responsibility. " 23 Is that right? 24 A. That's correct. 25 Q. By doing this, by making that</p>	<p style="text-align: right;">111</p> <p>1 DAVIS, Ph.D. 2 So, how do you see the two as being 3 different? 4 A. Well, I think that the fashion show 5 was an event and that the intent of this 6 language is -- the word "racist events" is 7 related to that, racist activities, racist -- 8 events it says what it says. 9 Q. Okay. 10 So, by trying to protect against 11 future racist events does not protect against 12 racism; is that what you are saying? 13 A. I think that the problem of racism 14 is arguably a much larger issue than the 15 issue of a racist event. 16 Q. If that's your opinion, that's your 17 opinion -- 18 A. It is. 19 Q. Okay. 20 MR. SELLS: Please go to 21 Paragraph 54. 22 Q. There is another statement that you 23 talk about, right, this is in addition to the 24 February 21st, statement -- 25 A. That's right --</p>
<p style="text-align: right;">110</p> <p>1 DAVIS, Ph.D. 2 allegation you're saying that the President 3 of F.I.T., and those that work for F.I.T. in 4 helping her to craft this lie, did so to give 5 the belief that Dr. Brown and F.I.T. were 6 trying to prevent future racist events from 7 occurring; is that right? 8 A. No, it was designed to show -- I'm 9 reading from Paragraph 51. "Her statement 10 was designed to show that she, Dr. Brown, was 11 taking affirmative steps --" not that she was 12 doing it, but that she was showing it. 13 Q. Right. 14 So she was making it -- given the 15 false impression based upon a lie, right? 16 A. I -- I stand by the language in the 17 complaint. 18 Q. Got it. 19 And so F.I.T. would lie to show that 20 it is taking steps to prevent racism when in 21 fact they are not, right? 22 A. Again, sir, the point in Paragraph 23 51 is specific about racist events not 24 racism. 25 Q. Okay.</p>	<p style="text-align: right;">112</p> <p>1 DAVIS, Ph.D. 2 Q. — I'll get to the March 5th 3 statement where you allege "Dr. Brown 4 escalated her rhetoric in an e-mail to all 5 F.I.T. employees and she wrote, 'Since the 6 MFA fashion show, we, the F.I.T. community, 7 have been going through a very painful 8 period. What happened that evening was 9 appalling and indefensible; and as president 10 of this college, I was angry and embarrassed 11 that we allowed F.I.T. to be represented in 12 this way. 13 Following the show, I immediately 14 commissioned an independent investigation, 15 which is ongoing. People who know me, know I 16 often say that you cannot legislate good 17 behavior. As someone who has felt the sting 18 of racism, I am constantly reminded of it's 19 intractability and it is never less than 20 shocking. 21 Our commitment going forward must be 22 constant and real and authentic enough to 23 transform our pain into the kind of 24 meaningful change that characterizes the best 25 of us.'</p>

<p style="text-align: right;">113</p> <p>1 DAVIS, Ph.D. 2 These lies added to her false 3 narrative amplifying her previous defamation 4 of Dr. Davis."</p> <p>5 Did you write or did you swear to 6 that?</p> <p>7 A. I swore to that.</p> <p>8 Q. Then you write in Paragraph 55, "The 9 fact that these lies came from the black 10 president of Fashion Institute of Technology 11 made them especially believable and damaging 12 because they were made by someone with 13 authority in the areas of racism as someone 14 who has felt the sting of racism. Fashion 15 and academic administration including the 16 duties of an academic dean. They were also 17 especially believable and damaging because 18 the average person would assume the president 19 of F.I.T. knew facts about the incident that 20 they did not."</p> <p>21 Did you swear that?</p> <p>22 A. I did.</p> <p>23 Q. Then you write in Paragraph 56, 24 "Moreover, Dr. Brown made these statements in 25 her capacity as president of F.I.T., speaking</p>	<p style="text-align: right;">115</p> <p>1 DAVIS, Ph.D. 2 Q. And so if F.I.T. can throw you under 3 the bus, use you as a scapegoat to get out of 4 allegations that it acted in a racist manner, 5 they could do that to anybody, right?</p> <p>6 MR. DRANOFF: Object to the 7 form.</p> <p>8 A. I can't speculate about what they 9 could do regarding other people. I speak to 10 what they did to me.</p> <p>11 Q. What they did to you and what they 12 did to Kyle Farmer, correct?</p> <p>13 A. My suit does not involve Kyle 14 Farmer. It is -- I speak to what they did to 15 me.</p> <p>16 Q. Got it.</p> <p>17 So what were the reasons that they 18 gave for terminating you?</p> <p>19 A. They produced a letter -- I was 20 given a letter -- e-mailed a letter actually 21 that had several points that were used for 22 justification for my termination. Would you 23 like me to summarize what those are?</p> <p>24 Q. Yes, I would. Tell me. I want to 25 know the reasons that they gave you.</p>
<p style="text-align: right;">114</p> <p>1 DAVIS, Ph.D. 2 on behalf of F.I.T. and representing her 3 statements to the public as reflecting the 4 conclusions, determinations, factfinding and 5 decisions of F.I.T. She was at all times 6 authorized to speak on behalf of F.I.T. and 7 was within the scope of her authority and 8 employment when she made these statements. 9 As such, her false statements, innuendos, 10 insinuations, remarks and implied criticisms 11 regarding Dr. Davis are attributable to and 12 indistinguishable from those events from 13 those of F.I.T."</p> <p>14 Did you swear to that?</p> <p>15 A. I did.</p> <p>16 MR. SELLS: We can take that 17 down.</p> <p>18 Q. Now, Dr. Davis, you have given us 19 your qualifications, your experience. You 20 have held a lot of positions that are high up 21 in academia and elsewhere; would you agree 22 with that?</p> <p>23 A. I have been a department chair and a 24 dean, and I suppose that's -- that is high 25 up.</p>	<p style="text-align: right;">116</p> <p>1 DAVIS, Ph.D. 2 A. Well, I might not recall all of the 3 specifics. One, there were two things 4 related to the MFA show, neither of which had 5 to do with anything with the accessories 6 specifically or any allegations of racism. 7 One of them was that I -- when I overheard 8 that communications specialist, Alex Mann, 9 report to her boss, VP Keane, after the show 10 that she felt there might be some blow back 11 about the show, that I failed to act on that. 12 A second thing connected to the show 13 was the meeting that we have already 14 discussed with the students, the MFA 15 students, following the fashion show. 16 The other points did not have 17 anything to do with the fashion show. They 18 had to do with my administrative duties; and 19 one point was -- had to do with the 20 admissions of Chinese students to the MFA 21 program. They were -- I don't remember the 22 specifics of those, but they were 23 administrative, related to my administrative 24 responsibilities. 25 Q. Can you go through the rest? So</p>

<p style="text-align: right;">117</p> <p>1 DAVIS, Ph.D.</p> <p>2 admission of Chinese students; what about</p> <p>3 that?</p> <p>4 A. There were questions or -- I mean, I</p> <p>5 don't know about questions but one of the</p> <p>6 reasons given for my termination was that too</p> <p>7 many Chinese students were admitted to the</p> <p>8 MFA fashion design program, and I failed to</p> <p>9 do anything about that.</p> <p>10 Q. Anything else regarding</p> <p>11 administrative duties?</p> <p>12 A. I don't -- I don't recall the</p> <p>13 specifics.</p> <p>14 Q. Okay. With regard to the statement</p> <p>15 that part of the reason for your termination</p> <p>16 had to do with the meeting with students, can</p> <p>17 you describe that further? What did they say</p> <p>18 about it?</p> <p>19 A. It was just -- it was also not</p> <p>20 specific. It -- it just said that I chose to</p> <p>21 meet -- I don't want to paraphrase. I don't</p> <p>22 recall what it says.</p> <p>23 Q. All right.</p> <p>24 When was the last time you saw this</p> <p>25 letter?</p>	<p style="text-align: right;">119</p> <p>1 DAVIS, Ph.D.</p> <p>2 I tell you what. If you want to talk</p> <p>3 about it off the record a little bit,</p> <p>4 I would be happy to.</p> <p>5 MR. SELLS: Okay. Okay.</p> <p>6 MR. DRANOFF: All right.</p> <p>7 MR. SELLS: Got it. All right.</p> <p>8 Q. Now in terms of the suggestion that</p> <p>9 you were terminated in part because you</p> <p>10 overheard a statement that was made after --</p> <p>11 right after the fashion show, and I think you</p> <p>12 were talking about the word blow back,</p> <p>13 something like that, that you failed to act.</p> <p>14 Can you be more specific about that</p> <p>15 allegation? I mean, what was it that they</p> <p>16 said you heard, and then just tell us is it</p> <p>17 true that you heard something of that nature</p> <p>18 or not?</p> <p>19 A. I was -- first of all, I don't</p> <p>20 recall the specifics. I was standing after</p> <p>21 the show with Vice President Keane and Alex</p> <p>22 Mann and they were talking. I was not part</p> <p>23 of their group. I overheard Alex Mann say to</p> <p>24 Loretta Keane that there might be -- I don't</p> <p>25 remember the word she used -- problems</p>
<p style="text-align: right;">118</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't recall.</p> <p>3 Q. Well, you know it came up just</p> <p>4 yesterday in VP Glass's testimony, right?</p> <p>5 A. I don't recall --</p> <p>6 Q. You were --</p> <p>7 A. I'm sorry. I don't recall that we</p> <p>8 looked at it though.</p> <p>9 Q. No, we didn't. We didn't look at</p> <p>10 it.</p> <p>11 A. No, that is why I don't remember the</p> <p>12 specifics.</p> <p>13 Q. Do you still have the letter?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 MR. SELLS: I call for the</p> <p>17 production of the letter.</p> <p>18 MR. DRANOFF: Standard, just</p> <p>19 put it in writing.</p> <p>20 MR. SELLS: I got it, but is it</p> <p>21 possible that we could get a copy of</p> <p>22 this letter for the afternoon so that</p> <p>23 I could go through it? I just don't</p> <p>24 want to have to --</p> <p>25 MR. DRANOFF: No, I get that.</p>	<p style="text-align: right;">120</p> <p>1 DAVIS, Ph.D.</p> <p>2 related to the press following the show.</p> <p>3 So I assumed these were two people</p> <p>4 from the Communications Department, one</p> <p>5 senior administrator from the Communications</p> <p>6 Department, this was their business.</p> <p>7 Q. So, when you heard this discussion</p> <p>8 about problems related to the press following</p> <p>9 the show, did you know they were talking</p> <p>10 about the accessories and how they could be</p> <p>11 characterized as racially insensitivity?</p> <p>12 A. I don't believe there was anything</p> <p>13 specific.</p> <p>14 Q. And so, when you saw -- and you saw</p> <p>15 the models walking with these accessories,</p> <p>16 right? The big lips and the big ears, you</p> <p>17 saw that --</p> <p>18 A. Yes.</p> <p>19 Q. -- as it happened, right?</p> <p>20 A. Yes.</p> <p>21 Q. And not a bone in your body or not a</p> <p>22 thought in your head came across to you as,</p> <p>23 Wow, that's -- that could be interpreted as</p> <p>24 racist; is that right?</p> <p>25 A. I thought that the looks -- the</p>

<p style="text-align: right;">121</p> <p>1 DAVIS, Ph.D.</p> <p>2 accessories were ugly. I thought that they</p> <p>3 detracted from the beauty of Jung Ki's</p> <p>4 designs. I thought they were unnecessary.</p> <p>5 They did not come across to me as racist.</p> <p>6 Q. Not even a -- you didn't even have</p> <p>7 an inkling like, Whoa, it is possibly racist</p> <p>8 or anything like that? To you it was just,</p> <p>9 these are ugly and unnecessary; is that</p> <p>10 correct?</p> <p>11 A. That is what I recall.</p> <p>12 Q. Oh. That's not going to be a good</p> <p>13 answer on this transcript. When you say,</p> <p>14 "that's what I recall"; are you talking about</p> <p>15 my question, which was that you didn't see</p> <p>16 this as being possibly racist at all --</p> <p>17 A. I don't believe that was your exact</p> <p>18 question. My -- my comment was -- or my</p> <p>19 answer related to the fact that this was a</p> <p>20 show featuring 10 different designers showing</p> <p>21 multiple looks; so there was -- I believe</p> <p>22 that show lasted over an hour and that each</p> <p>23 student was presenting a different kind of</p> <p>24 concept; so we saw a lot of things come down</p> <p>25 the runway. I don't recall thinking at the</p>	<p style="text-align: right;">123</p> <p>1 DAVIS, Ph.D.</p> <p>2 (Whereupon, a lunch recess was</p> <p>3 taken 12:53; after which, the</p> <p>4 proceedings continued at 2:00 p.m. as</p> <p>5 follows.)</p> <p>6 MR. SELLS: Back on the record.</p> <p>7 Q. So, Ms. Davis, the people that</p> <p>8 reported to you and you gave us their names</p> <p>9 before the break. Can you just tell us when</p> <p>10 you describe their -- when you talk about</p> <p>11 their names; can you just tell us what race</p> <p>12 they are?</p> <p>13 A. Certainly. Umilta Alsop, is black;</p> <p>14 Marilyn Barton, is white; Marjorie Phillips,</p> <p>15 is black; Anton Baptiste, is black; Carolyn</p> <p>16 DeSantis, is white.</p> <p>17 Q. Okay.</p> <p>18 And what time in 2012 did you take</p> <p>19 over?</p> <p>20 A. I believe I started on July 1st.</p> <p>21 Q. Of the people that worked directly</p> <p>22 for you and reported to you, were any of them</p> <p>23 union members?</p> <p>24 A. I believe all of them were union</p> <p>25 members.</p>
<p style="text-align: right;">122</p> <p>1 DAVIS, Ph.D.</p> <p>2 time that Jung Ki's accessories were racist.</p> <p>3 Q. How do you know Marjorie Phillips?</p> <p>4 A. I met Marjorie when I came to work</p> <p>5 in the School of Graduate Studies in 2012.</p> <p>6 Q. All right.</p> <p>7 When you came to the School of</p> <p>8 Graduate Studies in 2012, who were your</p> <p>9 direct reports?</p> <p>10 A. At that time Marilyn Barton, Umilta</p> <p>11 Alsop, Marjorie Phillips and Anton Baptiste,</p> <p>12 Carol DeSantis.</p> <p>13 MR. DRANOFF: Derek, and</p> <p>14 everyone else, it seems, Derek, you</p> <p>15 might have moved onto a different</p> <p>16 topic. Do you think maybe now we</p> <p>17 should take a half hour for some chow</p> <p>18 and come back after lunch?</p> <p>19 MR. SELLS: Yes, that's fine.</p> <p>20 We can break for lunch now.</p> <p>21 Eric, did you want to talk off</p> <p>22 the record --</p> <p>23 MR. DRANOFF: Yes.</p> <p>24 MR. SELL: We can come back at</p> <p>25 1:00 p.m.</p>	<p style="text-align: right;">124</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Got it.</p> <p>3 And what was your understanding of</p> <p>4 how the employees who work for you as part of</p> <p>5 the union; how was it they could get raises</p> <p>6 and/or promotions?</p> <p>7 A. There is a process that is described</p> <p>8 and articulated in the collective bargaining</p> <p>9 agreement that governs that.</p> <p>10 Q. Well, what's your understanding; how</p> <p>11 does it work?</p> <p>12 A. The various components to it</p> <p>13 depending on what's happening; whether it is</p> <p>14 a re-evaluation of a staff member, whether it</p> <p>15 is a reclassification of a staff member,</p> <p>16 whether it's a hiring of the staff member. I</p> <p>17 believe that there are slightly different</p> <p>18 procedures that govern those different</p> <p>19 categories.</p> <p>20 Q. Okay.</p> <p>21 As supervisor of them, did you have</p> <p>22 any role in making sure or ensuring that a</p> <p>23 raise could be given to people that are below</p> <p>24 you?</p> <p>25 A. I --</p>

<p style="text-align: right;">125</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Object to the</p> <p>3 form and it is a clarity thing,</p> <p>4 Derek.</p> <p>5 MR. SELLS: All right. I will</p> <p>6 rephrase.</p> <p>7 MR. DRANOFF: Yes.</p> <p>8 Q. So, with regard to --- we'll take one</p> <p>9 at a time. With regard to Marjorie Phillips,</p> <p>10 did you have an understanding that in order</p> <p>11 for her to get a raise or a promotion that</p> <p>12 you needed to do something?</p> <p>13 A. I could trigger the request for</p> <p>14 consideration of re-evaluation of a position.</p> <p>15 I trigger that --- I trigger that process by</p> <p>16 writing a request to the vice president of</p> <p>17 Academic Affairs; so he is the first or</p> <p>18 whoever is in that seat would be the first up</p> <p>19 to consideration of whether or not it was</p> <p>20 possible.</p> <p>21 Q. Got it --</p> <p>22 MR. DRANOFF: Just again,</p> <p>23 further on my clarification and,</p> <p>24 Derek, it is only because I don't</p> <p>25 know, just being accurate. Just so</p>	<p style="text-align: right;">127</p> <p>1 DAVIS, Ph.D.</p> <p>2 Affairs.</p> <p>3 Q. Got it.</p> <p>4 Did you ever do that for Anton</p> <p>5 Baptiste --</p> <p>6 A. I did not.</p> <p>7 Q. You got to let me finish.</p> <p>8 So you never tried to give Anton</p> <p>9 Baptiste a raise or a promotion; is that</p> <p>10 right?</p> <p>11 MR. DRANOFF: Object to the</p> <p>12 form.</p> <p>13 A. I did not send a letter to the VP</p> <p>14 with that request.</p> <p>15 Q. Okay.</p> <p>16 Umlta Alsop, while you were in your</p> <p>17 position as dean, what was your understanding</p> <p>18 of how she could get a raise and/or a</p> <p>19 promotion?</p> <p>20 A. The same process, as I have</p> <p>21 described.</p> <p>22 Q. Did you ever do that for Umlta</p> <p>23 Alsop? Did you --</p> <p>24 A. I did not --- sorry. Sorry --</p> <p>25 Q. --- ever try to trigger --</p>
<p style="text-align: right;">126</p> <p>1 DAVIS, Ph.D.</p> <p>2 we are all clear, I would suspect</p> <p>3 that perhaps the CBA has its own</p> <p>4 provisions for incremental raises</p> <p>5 irrespective of any other process.</p> <p>6 That is why I'm making that</p> <p>7 clarification.</p> <p>8 MR. SELLS: All right. I'm</p> <p>9 just asking about her understanding</p> <p>10 of it.</p> <p>11 MR. DRANOFF: Okay.</p> <p>12 Q. So, Dr. Davis, while Ms. Phillips</p> <p>13 was under your supervision, did you ever</p> <p>14 trigger that for her? Did you ever make a</p> <p>15 request that she be given a change in title</p> <p>16 or a raise?</p> <p>17 A. I did not.</p> <p>18 Q. Okay.</p> <p>19 Anton Baptiste, what was your</p> <p>20 understanding of how you could get him a</p> <p>21 raise and/or promotion?</p> <p>22 A. Same process.</p> <p>23 Q. Same process --</p> <p>24 A. I would need to request that --- make</p> <p>25 the initial request to the VP for Academic</p>	<p style="text-align: right;">128</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Sorry.</p> <p>3 Q. You didn't?</p> <p>4 MR. DRANOFF: Object to the</p> <p>5 form.</p> <p>6 A. I did not.</p> <p>7 Q. Got it.</p> <p>8 Marilyn Barton, what was yours</p> <p>9 understanding of how you could assist her in</p> <p>10 getting a raise or a promotion?</p> <p>11 A. My consideration in Marilyn's case</p> <p>12 wasn't about whether I could get her a raise</p> <p>13 or a promotion.</p> <p>14 Q. Did you understand my question?</p> <p>15 A. I did. I answered your question.</p> <p>16 Q. Okay.</p> <p>17 So my question was, What was your</p> <p>18 understanding of how you could assist her in</p> <p>19 getting a raise or a promotion?</p> <p>20 A. Marilyn, as a union employee, in</p> <p>21 matters of a raise or promotion would go</p> <p>22 through the same process -- the same process</p> <p>23 would apply.</p> <p>24 Q. Got it.</p> <p>25 And did you ever write a letter for</p>

<p>1 DAVIS, Ph.D.</p> <p>2 her to get a raise or a promotion?</p> <p>3 A. I wrote a letter to get a</p> <p>4 re-evaluation of her position.</p> <p>5 Q. Okay.</p> <p>6 When did you write this letter?</p> <p>7 A. I believe some time in 2017.</p> <p>8 Q. 2017?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And was there a reconsideration?</p> <p>11 A. Yes, there was.</p> <p>12 Q. When did that happen?</p> <p>13 A. After --- I believe this was in the</p> <p>14 fall of 2017. After I submitted my</p> <p>15 recommendation, it was out of my hands. I</p> <p>16 actually don't know when the re- --- when the</p> <p>17 final decision was made about Marilyn's</p> <p>18 position. I don't recall.</p> <p>19 Q. And why wouldn't you know?</p> <p>20 A. I would have been notified; but I</p> <p>21 would not have been involved in the final</p> <p>22 process.</p> <p>23 MR. SELLS: Okay. I call for</p> <p>24 the production of Marilyn Barton's</p> <p>25 raise request. And the decision</p>	<p>131</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Why didn't you do it for Ms. DeSantis?</p> <p>3 A. I don't believe that there was a</p> <p>4 reason. I don't believe there was a reason</p> <p>5 to make a request.</p> <p>6 Q. All right.</p> <p>7 And why didn't you do that for</p> <p>8 Ms. Alsop?</p> <p>9 A. I don't believe there was a reason</p> <p>10 to make a request.</p> <p>11 Q. And Mr. Baptiste, why didn't you do</p> <p>12 it for him?</p> <p>13 A. I don't believe there was a reason</p> <p>14 to make a request.</p> <p>15 Q. And Ms. Phillips, why didn't you do</p> <p>16 it for her?</p> <p>17 A. I don't believe there was a reason</p> <p>18 to make a request.</p> <p>19 Q. Okay.</p> <p>20 Marilyn Barton, why did you do it</p> <p>21 for her?</p> <p>22 A. Marilyn Barton was technically</p> <p>23 working out of classification. She had job</p> <p>24 duties that were not reflected in her</p> <p>25 position description; and so, per the</p>
<p>130</p> <p>1 DAVIS, Ph.D.</p> <p>2 associated with her getting the ---</p> <p>3 MR. DRANOFF: You're making</p> <p>4 that request of all parties, Derek?</p> <p>5 MR. SELLS: No, of F.I.T. and</p> <p>6 Ms. Barton, to the extent that she</p> <p>7 might have it; but we'll follow it up</p> <p>8 with writing.</p> <p>9 I think we asked yesterday as</p> <p>10 well for the same information.</p> <p>11 Q. Carol DeSantis, how long did she</p> <p>12 work for you?</p> <p>13 A. She was there when I arrived in</p> <p>14 2012, and she retired before I left F.I.T.;</p> <p>15 so I'm not sure of what date she retired.</p> <p>16 Q. Okay.</p> <p>17 What is your understanding of how</p> <p>18 you could assist her in getting a raise</p> <p>19 and/or promotion?</p> <p>20 A. I -- the same process would apply.</p> <p>21 I would write a letter making a request to</p> <p>22 the VP of Academic Affairs.</p> <p>23 Q. All right.</p> <p>24 And did you do that for Ms. DeSantis?</p> <p>25 A. I did not.</p>	<p>132</p> <p>1 DAVIS, Ph.D.</p> <p>2 collective bargaining agreement, that</p> <p>3 situation needed to be remedied.</p> <p>4 Q. And what duties did she have that</p> <p>5 fell out of her job description?</p> <p>6 A. Again, as I recall, Marilyn was</p> <p>7 doing additional work for the school as a</p> <p>8 whole; handling administrative matters for</p> <p>9 the school as a whole, assisting me directly.</p> <p>10 I would have to look at her position --- at</p> <p>11 the documents related to this to be certain.</p> <p>12 Q. When you talk about assisting the</p> <p>13 school as a whole, for what? Like what?</p> <p>14 What did she do to assist the school as</p> <p>15 whole?</p> <p>16 A. Well, what I'm differentiating there</p> <p>17 is that other assistants -- other</p> <p>18 administrative assists were tasked with</p> <p>19 assisting departments -- specific</p> <p>20 departments. Whereas Marilyn had duties to</p> <p>21 assist the school more generally in its</p> <p>22 administrative needs.</p> <p>23 Q. I see.</p> <p>24 So are you saying that Ms. Phillips</p> <p>25 wasn't handling responsibilities that were</p>

<p style="text-align: right;">133</p> <p>1 DAVIS, Ph.D. 2 outside of her job description? 3 A. I don't believe that she was. 4 Q. Why don't you believe that she was? 5 A. Because I don't believe that she was 6 handling duties that were outside of her job 7 description. 8 Q. Well, what was her job description? 9 A. We would need to look at that 10 document. 11 Q. Well, why would we need to look at 12 it? 13 A. Because I don't recall. 14 Q. Well, you don't recall. Then how 15 could you say with certainty that you don't 16 believe she was working out of her job 17 description? 18 A. Because I said the word "believe." 19 I don't believe she was working out of her 20 job description. I would need to see that 21 job description and re-visit the facts in 22 order to make a definitive statement about 23 that. 24 Q. Okay. 25 So, when you say you "don't believe"</p>	<p style="text-align: right;">135</p> <p>1 DAVIS, Ph.D. 2 but it was probably 2014 or 2015, I'm 3 guessing, when that program was closed under 4 a provision of a contract called 5 Retrenchment; and so that program support 6 that Marjorie had been providing, she no 7 longer needed to provide because the program 8 no longer existed. 9 Q. Got it. 10 So what you're saying is that 11 Ms. Phillips, for two years, worked outside 12 of her job description assisting this other 13 program; but you didn't see fit to move that 14 she be reclassified during that two year 15 period -- 16 A. No. 17 Q. -- is that what I understand you to 18 say? 19 A. No, that is -- that is not correct. 20 Q. No? 21 A. When I first arrived Marjorie was 22 supporting two departments. One department 23 was closed under the F.I.T. provision of 24 Retrenchment and Marjorie was not working 25 outside of the stipulated job description,</p>
<p style="text-align: right;">134</p> <p>1 DAVIS, Ph.D. 2 something, it has to be based on fact and 3 you, ma'am, have no recollection of what her 4 job duties were? 5 A. Oh, that is -- 6 Q. Isn't that true? 7 A. No, that is not true. 8 Q. Okay. 9 So what were her job duties? 10 A. I cannot re- -- recite the full list 11 of her job duties without a document in front 12 of me; but one of her primary duties was 13 serving as the administrative assistant to 14 the Fashion and Textile Studies Department. 15 So she had specific tasks related to that 16 department, its faculty and its students as 17 well as its programs and events. 18 Q. Okay. 19 She didn't do anything outside of 20 that? 21 A. Well, there was an earlier time in 22 my tenure at F.I.T. when she was assisting a 23 second program. It was the Sustainable 24 Interior Environments Program, and that 25 program -- I'm not going to recall the year,</p>	<p style="text-align: right;">136</p> <p>1 DAVIS, Ph.D. 2 and I would need to see a copy of the job 3 description in order to explain exactly why 4 to you. 5 Q. So again, you can't tell me why; but 6 you are just saying I'll remember but I need 7 to see the document? 8 A. I -- 9 Q. Don't you see what you're doing -- 10 MR. DRANOFF: Derek -- 11 Q. -- Dr. Davis? Don't you see what 12 you're doing? 13 MR. DRANOFF: Derek, objection. 14 MR. SELLS: Okay. 15 Q. Don't you see what you're doing, 16 Dr. Davis? 17 A. I am telling you the truth that I 18 need to see the position description in order 19 to make a statement about this. 20 Q. But you already made a statement. 21 You already made a statement. You just said 22 that for two years Ms. Phillips was 23 supporting two programs, but that she wasn't 24 working out of her job description -- 25 A. Her job description --</p>

<p style="text-align: right;">137</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. -- but then you said but I need to</p> <p>3 see the job description in order to tell you</p> <p>4 why she wasn't working out of her title --</p> <p>5 MR. DRANOFF: Objection.</p> <p>6 Objection.</p> <p>7 Q. -- isn't that what you are saying?</p> <p>8 A. No --</p> <p>9 Q. So --</p> <p>10 A. I think --</p> <p>11 Q. Tell me why --</p> <p>12 A. I think --</p> <p>13 Q. -- tell me why Ms. Phillips was</p> <p>14 working within her job description for the</p> <p>15 two years that she was assisting the two</p> <p>16 different programs. Tell me why?</p> <p>17 A. Because her job description did not</p> <p>18 relate specifically to either program. The</p> <p>19 job description was written for all of the</p> <p>20 administrative staff of the Graduate School</p> <p>21 does not specify the programs to which they</p> <p>22 are assigned, at least during my tenure it</p> <p>23 did not. It described --</p> <p>24 Q. Okay --</p> <p>25 A. Derek, excuse me --</p>	<p style="text-align: right;">139</p> <p>1 DAVIS, Ph.D.</p> <p>2 retired, it was Marjorie Phillips who took</p> <p>3 over Ms. DeSantis' job responsibilities;</p> <p>4 isn't that right?</p> <p>5 A. She did not take over all of --</p> <p>6 Q. I didn't see "all" --</p> <p>7 A. She did not take over --</p> <p>8 Q. She took over some of her</p> <p>9 responsibility, right?</p> <p>10 A. Can you be more specific, please.</p> <p>11 Q. Oh. Like what do you want me to be</p> <p>12 more specific about?</p> <p>13 Did Ms. Phillips take over some of</p> <p>14 Ms. DeSantis' job responsibilities when she</p> <p>15 retired?</p> <p>16 A. I would like to understand better.</p> <p>17 I would like a clarification on what job</p> <p>18 responsibilities you are referring to.</p> <p>19 Q. Well, what did Ms. DeSantis do?</p> <p>20 A. Mrs. DeSantis, her primary</p> <p>21 responsibility was handling admissions.</p> <p>22 Q. Okay.</p> <p>23 And did Ms. Phillips have some</p> <p>24 responsibilities that Ms. DeSantis had?</p> <p>25 A. I can't recall.</p>
<p style="text-align: right;">138</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Let her finish.</p> <p>3 MR. SELLS: All right. Go</p> <p>4 ahead.</p> <p>5 A. It describes more generic duties;</p> <p>6 and in terms of support of departments,</p> <p>7 faculty and students, that's what I -- that's</p> <p>8 what I would need to have in front of me in</p> <p>9 order to refresh my memory.</p> <p>10 Q. Did everybody who worked for you,</p> <p>11 did they have a job description?</p> <p>12 A. Everyone -- everyone who worked for</p> <p>13 me had a job description. Many of those job</p> <p>14 descriptions had not been updated for a long</p> <p>15 time when I arrived, and part of what --</p> <p>16 another component of what was happening in</p> <p>17 the Graduate School was that there was growth</p> <p>18 and the addition of new staff members and new</p> <p>19 faculty members; so new job descriptions were</p> <p>20 written for those people.</p> <p>21 Q. All right.</p> <p>22 So one of the people that had a job</p> <p>23 description was Carol DeSantis, right?</p> <p>24 A. Yes.</p> <p>25 Q. Yes. And when Carol DeSantis</p>	<p style="text-align: right;">140</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Did you have something called an</p> <p>3 illustration of the Graduate Program?</p> <p>4 A. Yes, we do.</p> <p>5 Q. What is that?</p> <p>6 A. That is the Master of Fine Arts</p> <p>7 Program.</p> <p>8 Q. Did Ms. Phillips take over the</p> <p>9 illustration of the Graduate Program?</p> <p>10 A. Ms. DeSantis when -- I'm sorry.</p> <p>11 Ms. Phillips, when Ms. DeSantis retired and</p> <p>12 the Sustainable Interior Environments Program</p> <p>13 was closed, I believe she did pick up the</p> <p>14 duties for the Illustration Department.</p> <p>15 Q. Oh. And that was not in</p> <p>16 Ms. Phillips job description, was it?</p> <p>17 A. Yes, it was; because again,</p> <p>18 Ms. Phillips's job description was not tied</p> <p>19 to any single department. It's a generic</p> <p>20 description of support for the school and the</p> <p>21 department's of the school.</p> <p>22 Q. I see.</p> <p>23 So Ms. DeSantis was given the</p> <p>24 specific job responsibility of illustration</p> <p>25 for the Graduate School Program. That was</p>

<p style="text-align: right;">141</p> <p>1 DAVIS, Ph.D.</p> <p>2 very specific, right?</p> <p>3 A. No.</p> <p>4 Q. Oh, no -- okay --</p> <p>5 A. Ms. DeSantis' job description would 6 not have included a reference to the 7 Illustration Department.</p> <p>8 Q. So, she was working out of her job 9 description?</p> <p>10 A. No, sir, that's not how the job 11 descriptions in the school of graduate 12 studies worked. They were not specific to 13 academic departments. That changed during my 14 tenure.</p> <p>15 Q. Oh, it did?</p> <p>16 A. It did.</p> <p>17 Q. Oh, when did that happen?</p> <p>18 A. That happened in the context of the 19 effort to build the school and to add staff 20 to assist the -- specifically the master 21 study programs and the Master of Fine Arts 22 Programs.</p> <p>23 MR. SELLS: Okay. I'm calling 24 for the production of job 25 descriptions that were given to each</p>	<p style="text-align: right;">143</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. There was.</p> <p>3 Q. Okay.</p> <p>4 So when Ms. Phillips was given 5 responsibilities that Ms. DeSantis had, were 6 those responsibilities in the previous 7 administration's job description or was it 8 from yours?</p> <p>9 A. No, they were -- they were from 10 Dr. Arbuckle.</p> <p>11 Q. Got it.</p> <p>12 Just so I'm clear. So, when 13 Ms. Phillips took over Dr. Arbuckle's set of 14 descriptions that were given to Ms. DeSantis, 15 they were not the same description of job 16 that Ms. Phillips had, correct?</p> <p>17 A. No, that is not correct --</p> <p>18 Q. They had the same job description, 19 exact same job description; is that what you 20 are saying?</p> <p>21 A. I'm not sure about the question. 22 Who had the same job description?</p> <p>23 Q. Ms. Phillips and Mrs. DeSantis.</p> <p>24 A. They did not probably. I would have 25 to, again, look and the reason for that would</p>
<p style="text-align: right;">142</p> <p>1 DAVIS, Ph.D.</p> <p>2 of the people that worked under 3 Dr. Davis.</p> <p>4 Q. Each of the descriptions were 5 written out, correct?</p> <p>6 A. So the descriptions for staff that I 7 mentioned -- Marjorie Phillips, Marilyn 8 Barton, Unilta Alsop, Anton Baptiste and 9 Carol DeSantis -- those job descriptions were 10 done by my predecessor, the interim dean, 11 Joanne Arbuckle.</p> <p>12 The descriptions for the jobs that 13 were added during my tenure were written 14 freshly and in collaboration with Academic 15 Affairs and Human Resources.</p> <p>16 Q. Yes, but these are both in writing, 17 right --</p> <p>18 A. They are.</p> <p>19 Q. -- both set of job descriptions are 20 in writing --</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. Okay.</p> <p>23 Your predecessor, Ms. Arbuckle, 24 there was a job description was there not for 25 each of these individuals; was there not?</p>	<p style="text-align: right;">144</p> <p>1 DAVIS, Ph.D.</p> <p>2 be because Ms. DeSantis was also handling 3 admission.</p> <p>4 MR. SELLS: Okay. So, I call 5 for the production of the job 6 descriptions for Ms. DeSantis, 7 Mr. Baptiste, Ms. Alsop, Ms. Barton 8 and Ms. Phillips both when Ms. Arbuckle 9 was there and then when you were 10 there.</p> <p>11 MR. MELITO: Follow up in 12 writing please, Derek.</p> <p>13 I'll just make a standing 14 request any document requests just 15 follow up in writing.</p> <p>16 MR. SELLS: We will.</p> <p>17 Q. All right.</p> <p>18 So you are going to swear it to, 19 right, Dr. Davis, you are going to swear that 20 Ms. Phillips did not take over separate duties 21 that were not part of her job description when 22 Ms. DeSantis retired; is that correct?</p> <p>23 A. No, that is not correct. And again --</p> <p>24 Q. Oh. You are not going to swear to 25 it --</p>

<p style="text-align: right;">145</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Again, I have said that I would need 3 to see the document, the job description, in 4 order to give you an answer to that question.</p> <p>5 Q. Got it.</p> <p>6 So you're saying then, just so we 7 are clear, you are not sure whether or not 8 Ms. Phillips was working out of her job 9 description; is that correct?</p> <p>10 A. Ms. Phillips would not have been 11 working out of her job description if she -- 12 because her job description did not specify 13 that she was supporting any specific 14 department.</p> <p>15 Q. I see.</p> <p>16 And under whose definition of her 17 job description did it become so amorphous 18 that you couldn't tell whether she was 19 working outside of her job description; is 20 that your description of her job or is that from before?</p> <p>22 A. That is the position description that was in Human Resources for Ms. Phillips.</p> <p>24 Q. Okay.</p> <p>25 But who wrote it? Was it's you --</p>	<p style="text-align: right;">147</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, they aren't.</p> <p>3 Q. Okay.</p> <p>4 So then you're going to say right 5 now under oath that Ms. Phillips' job 6 description encompassed everything that she 7 did; is that right?</p> <p>8 A. No, sir. I'm saying that in order 9 for --</p> <p>10 Q. This is funny --</p> <p>11 A. -- in order to answer your question, 12 I would need to see the document.</p> <p>13 Q. But yet you're saying that 14 Ms. Phillips did not qualify for a 15 reclassification of her job because 16 everything she did was already put in her job 17 description; you're saying two different 18 things. Don't you see what you're saying, 19 Doctor?</p> <p>20 A. I am not saying two different 21 things. In fact, I am saying the same thing 22 repeatedly. It is -- it is the same thing.</p> <p>23 Q. All right. I got it. I'll just 24 move on.</p> <p>25 But certainly you recall helping</p>
<p style="text-align: right;">146</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I did not write it --</p> <p>3 Q. -- was it Ms. Arbuckle?</p> <p>4 A. I do not know.</p> <p>5 Q. Okay.</p> <p>6 So what did Ms. Phillips' job 7 description say that was so amorphous that it 8 couldn't be said that she ever worked outside 9 of her job description; what were the words 10 used about it?</p> <p>11 A. First of all, I never described it 12 as an amorphous. I simply said that in order 13 to answer your question, I would need to see 14 that job description.</p> <p>15 Q. I'm confused because you keep saying 16 that Ms. Phillips could not have worked 17 outside of her job description because her 18 job description encompassed all the things 19 that Ms. Phillips did. Yet, when I ask you 20 to describe the language that said it was so, 21 you know, broad that it encapsulated 22 everything, you keep saying, "I need to see 23 the document --"</p> <p>24 A. That's correct.</p> <p>25 Q. They are two different things --</p>	<p style="text-align: right;">148</p> <p>1 DAVIS, Ph.D.</p> <p>2 Ms. Barton try and get a raise, right?</p> <p>3 A. No, that is a mischaracterization.</p> <p>4 Ms. Barton was working out of class, clearly 5 working out of her classification; and under 6 the union rules in those instances, there 7 needs to be a re-evaluation of the -- of the 8 position and that is what I asked for. That 9 is what the content of my letter to the vice 10 president reflects that and the process that 11 was followed was a process for re-evaluation.</p> <p>12 Q. All right.</p> <p>13 Was there a point in time when 14 Umilta Alsop went out on FMLA leave?</p> <p>15 A. Not that I recall.</p> <p>16 Q. You don't? So you don't remember 17 Umilta Alsop going out on FMLA leave and you 18 assigning to Ms. Phillips the duties that she 19 had related to Art Market?</p> <p>20 A. I don't recall specifically.</p> <p>21 Q. Oh.</p> <p>22 A. But that may have happened --</p> <p>23 Q. Oh.</p> <p>24 So when Ms. Phillips did the job of 25 the Art Market, that was not part of her job</p>

<p>1 DAVIS, Ph.D.</p> <p>2 description, correct?</p> <p>3 A. No, sir.</p> <p>4 Again, the job descriptions are not</p> <p>5 specific to departments. So the tasks that</p> <p>6 are described in the job description do not</p> <p>7 relate to specific departments. That's all.</p> <p>8 Q. Okay. All right.</p> <p>9 So suffice it to say that all the</p> <p>10 African-American people that reported to you</p> <p>11 you never saw fit to write a letter for them</p> <p>12 to get a reclassification or a raise?</p> <p>13 MR. DRANOFF: Object to the</p> <p>14 form.</p> <p>15 Q. Right?</p> <p>16 A. I was engaged in discussions with</p> <p>17 all members of the staff about reorganization</p> <p>18 as the school was growing and we were adding</p> <p>19 new faculty to departments and adding an</p> <p>20 entirely new department.</p> <p>21 So, we were all working, in my view</p> <p>22 at least, to try to more precisely define</p> <p>23 what the staff roles were going to be and how</p> <p>24 the staff that we had was going to be</p> <p>25 distributed in order to make the organization</p>	<p>149</p> <p>1 DAVIS, Ph.D.</p> <p>2 Barton because she was working out of</p> <p>3 classification and because, per the union</p> <p>4 contract, that is not allowable.</p> <p>5 Q. Now, the responsibilities that you</p> <p>6 claim Marilyn Barton had that were outside of</p> <p>7 her job description, how did she get them?</p> <p>8 MR. DRANOFF: Object to the</p> <p>9 form.</p> <p>10 A. Marilyn was not assigned to -- to a</p> <p>11 specific program. When I came to F.I.T., she</p> <p>12 was sitting outside the dean's office and</p> <p>13 doing work to support the dean; and so, we</p> <p>14 just continued with that work.</p> <p>15 Also, as the school grew and there</p> <p>16 were more things that needed to be school</p> <p>17 wide initiatives, Marilyn was involved in</p> <p>18 those.</p> <p>19 Q. Can you answer my question now? Can</p> <p>20 you, please, listen to the question and</p> <p>21 answer it? Who gave Ms. Barton her job</p> <p>22 responsibilities?</p> <p>23 A. I did.</p> <p>24 Q. You did --</p> <p>25 A. Yeah --</p>
<p>150</p> <p>1 DAVIS, Ph.D.</p> <p>2 as functional as possible.</p> <p>3 Q. I don't really understand your</p> <p>4 answer.</p> <p>5 My question was, During your tenure,</p> <p>6 the African-American employees that worked on</p> <p>7 your staff, you never saw fit to write a</p> <p>8 letter to reclassify them or get them a</p> <p>9 raise --</p> <p>10 MR. DRANOFF: Object to the</p> <p>11 form --</p> <p>12 Q. -- is that right?</p> <p>13 A. I -- first of all, I am not in the</p> <p>14 position or was not in the position as dean</p> <p>15 of granting anyone a raise. I was simply in</p> <p>16 the position of being able to request</p> <p>17 consideration of the process that would</p> <p>18 facilitate that; and I did not have the</p> <p>19 opportunity to request any such consideration</p> <p>20 for any of the employees that you mentioned.</p> <p>21 Q. Just the white one, right? Just the</p> <p>22 Caucasian one, Marilyn Barton, right? She is</p> <p>23 the only one you saw fit to be able to make</p> <p>24 that request of, right?</p> <p>25 A. I made the request for Marilyn</p>	<p>152</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. -- so you chose to give her</p> <p>3 responsibilities that were outside of her job</p> <p>4 description so you could then give her or</p> <p>5 make a request for her to be reclassified and</p> <p>6 given a raise --</p> <p>7 A. No --</p> <p>8 MR. DRANOFF: Object to the</p> <p>9 form --</p> <p>10 A. No --</p> <p>11 Q. -- isn't that right?</p> <p>12 A. No --</p> <p>13 Q. No, okay. Okay --</p> <p>14 A. That is not right --</p> <p>15 Q. -- but you were responsible for</p> <p>16 giving job duties to Ms. Alsop, to</p> <p>17 Ms. Phillips as well as to Mr. Baptiste as</p> <p>18 well, correct?</p> <p>19 A. They had assignments -- so no, I was</p> <p>20 not singularly responsible for that. For</p> <p>21 example --</p> <p>22 Q. No. No. No. I'm not asking you</p> <p>23 for all of that. I'm saying, Did you not</p> <p>24 give Ms. Phillips her responsibilities?</p> <p>25 A. Ms. Phillips when I came to F.I.T.</p> <p> already had some of her responsibilities.</p>

<p style="text-align: right;">153</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. No. No. No. No. No. I am</p> <p>3 asking you, Did you give her</p> <p>4 responsibilities? Were you able to give her</p> <p>5 responsibilities since she worked for you?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 You gave her, for example, the</p> <p>9 illustrations that were done by Ms. DeSantis,</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. And you gave her, when Ms. Alsop</p> <p>13 went out on FMLA, you gave her</p> <p>14 responsibilities that Ms. Alsop had, you did</p> <p>15 that, correct?</p> <p>16 A. In collaboration with Marjorie.</p> <p>17 Q. Okay —</p> <p>18 A. We discussed it.</p> <p>19 Q. All right.</p> <p>20 And so you could have given her</p> <p>21 other responsibilities that fell outside of</p> <p>22 her job description like you did for</p> <p>23 Ms. Barton, right?</p> <p>24 A. Ms. Barton was already performing</p> <p>25 some of those duties when I arrived; because</p>	<p style="text-align: right;">155</p> <p>1 DAVIS, Ph.D.</p> <p>2 saying under oath that Ms. Alsop did not do</p> <p>3 work as the dean's assistant when you became</p> <p>4 the dean at any point in time that you were</p> <p>5 the dean?</p> <p>6 A. There was no position as assistant</p> <p>7 to the dean when I arrived.</p> <p>8 Q. Is that my question?</p> <p>9 A. You asked if she was performing the</p> <p>10 work of assistant to the dean. The answer is</p> <p>11 there was no such position.</p> <p>12 Q. Did she do work as assistant to the</p> <p>13 dean without there being a title for it?</p> <p>14 A. Umilta did -- her special area was,</p> <p>15 and I believe still is, budget work; and</p> <p>16 that -- in the capacity that that is</p> <p>17 assisting the dean, yes.</p> <p>18 Q. You know Ms. Alsop is going to</p> <p>19 testify, right --</p> <p>20 A. Yeah --</p> <p>21 Q. -- okay. So you are saying under</p> <p>22 oath that she didn't do any of the work that</p> <p>23 Ms. Barton got credit for; is that correct?</p> <p>24 A. I am not saying that, and I don't</p> <p>25 know what you mean by "work that Ms. Barton</p>
<p style="text-align: right;">154</p> <p>1 DAVIS, Ph.D.</p> <p>2 she was assisting the person who preceded me</p> <p>3 and the people who preceded me; so I</p> <p>4 inherited a situation where Ms. Barton was</p> <p>5 already working out of classification and</p> <p>6 over time was able to make the request, per</p> <p>7 the union contract, to have this evaluated.</p> <p>8 Q. Okay.</p> <p>9 Wasn't it Ms. Alsop that had the</p> <p>10 responsibility of doing the work of the</p> <p>11 dean's assistant?</p> <p>12 A. That preceded me by a long time.</p> <p>13 Q. So, she stopped doing the dean's</p> <p>14 work when you got there?</p> <p>15 A. When I arrived, she was doing budget</p> <p>16 work and administrative work.</p> <p>17 Q. Okay.</p> <p>18 So, are you saying here under oath</p> <p>19 that Ms. Alsop did not do the work of the</p> <p>20 dean's assistant while you were the dean?</p> <p>21 A. When I arrived Ms. Alsop was not the</p> <p>22 dean's assistant.</p> <p>23 Q. That's not my question.</p> <p>24 A. That's my answer.</p> <p>25 Q. No. The question was, Are you</p>	<p style="text-align: right;">156</p> <p>1 DAVIS, Ph.D.</p> <p>2 got credit for."</p> <p>3 Q. Well, Ms. Barton was the one that</p> <p>4 was given your blessings to get reclassified</p> <p>5 and a raise because you said that you gave</p> <p>6 her responsibilities that fell outside of her</p> <p>7 job title?</p> <p>8 A. I said that when I arrived</p> <p>9 Ms. Barton was already doing jobs that were</p> <p>10 outside of her job description and that over</p> <p>11 time as those duties increased, it became</p> <p>12 necessary to seek a re-evaluation of her</p> <p>13 position; because she was working -- that she</p> <p>14 was working outside of the job description</p> <p>15 and that is not permissible under the laws of</p> <p>16 the collective bargaining agreement.</p> <p>17 Q. Okay.</p> <p>18 And so as these responsibilities</p> <p>19 increased on Ms. Barton, you're saying that</p> <p>20 none of those responsibilities were shared</p> <p>21 with Ms. Alsop; is that right?</p> <p>22 A. No, I'm not saying that.</p> <p>23 Q. Well, were they or were they not?</p> <p>24 A. I don't know what you mean by</p> <p>25 shared.</p>

<p style="text-align: right;">157</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. You were the one that was assigning 3 the work?</p> <p>4 A. I still don't know what you mean by 5 "shared." What do you mean? That --- what do 6 you mean by "shared"?</p> <p>7 Q. You don't know what it means to 8 share work?</p> <p>9 A. I don't know what you are referring 10 to when you say that some of those duties 11 were shared.</p> <p>12 Q. All right.</p> <p>13 What do you think I mean?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay.</p> <p>16 You don't know what I mean?</p> <p>17 A. I don't know.</p> <p>18 Q. So, if someone has the duty of 19 copying papers and it becomes very burdensome 20 so that the duty of copying papers has to be 21 shared; you don't understand what that means?</p> <p>22 A. I do, but I don't understand what --</p> <p>23 Q. So tell me what that means --</p> <p>24 A. I --</p> <p>25 Q. No. No. No --</p>	<p style="text-align: right;">159</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Right?</p> <p>3 A. Yes.</p> <p>4 Q. It got to the point where you need 5 to go get a reclassification; is that what 6 you said?</p> <p>7 A. That is what I said.</p> <p>8 Q. And so my question is, Well, these 9 duties that increased, were they shared with 10 Ms. Alsop?" And you said, "I don't know what 11 you mean. I don't know what you mean when 12 you talk about "shared duties. What do you 13 mean by "shared duties --"</p> <p>14 A. No.</p> <p>15 Q. So again, I ask you, Were these 16 duties shared between Ms. Barton and 17 Ms. Alsop?</p> <p>18 A. I will need a clarification on --</p> <p>19 Q. You will need it --</p> <p>20 A. -- on which duties -- in order to 21 answer this question, I would need a 22 clarification on which duties you are 23 referring to that are shared by Ms. Alsop and 24 Ms. Barton.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">158</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Would you allow me --</p> <p>3 Q. No. No. Before we go on to -- I 4 just asked you a hypothetical. I said 5 someone has the duty of making copies and the 6 duty becomes so burdensome that it has to be 7 shared; and I asked you do you understand 8 what that means and you said yes, you 9 understand what that means; is that right?</p> <p>10 A. I understand your hypothetical --</p> <p>11 Q. Okay.</p> <p>12 So now, since you understand what 13 that means, then you also understand that 14 Ms. Barton had job duties that you say were 15 so immense and so out of title for her that 16 you need to go and write this letter for her 17 to get a reclassification, otherwise it would 18 be in violation of the collective bargaining 19 agreement, right; that's what you said, 20 correct?</p> <p>21 A. No, that is not what I said. I did 22 not use the word "immense."</p> <p>23 Q. Okay.</p> <p>24 You said as the duties increased?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">160</p> <p>1 DAVIS, Ph.D.</p> <p>2 Sitting here right now, you don't 3 know, right --</p> <p>4 A. I don't know --</p> <p>5 Q. Right --</p> <p>6 A. -- I don't know what you are 7 referring to.</p> <p>8 Q. Okay. Let's go on, and we will move 9 on to another topic.</p> <p>10 Do you recall receiving a complaint 11 of race discrimination from Ms. Phillips?</p> <p>12 A. Are you speaking about a written 13 complaint or an oral complaint?</p> <p>14 Q. Under the policy of 15 antidiscrimination, does it matter?</p> <p>16 A. No, it didn't matter under the 17 policy; but I'm cure- -- I just wanted a 18 clarification about what we are talking about 19 here.</p> <p>20 Q. Why?</p> <p>21 A. So that I could answer the question 22 to the best of my ability.</p> <p>23 Q. Okay.</p> <p>24 So the question was, Do you recall 25 getting a complaint of discrimination from</p>

<p style="text-align: right;">161</p> <p>1 DAVIS, Ph.D.</p> <p>2 Marjorie Phillips?</p> <p>3 A. I do not recall getting a complaint 4 that would rise -- from Ms. Phillips -- that 5 would rise to the level of discrimination as 6 defined in the policy, in the F.I.T. policy.</p> <p>7 Q. Okay.</p> <p>8 So your answer is no, you didn't get 9 a complaint of discrimination; is that right?</p> <p>10 A. My complaint -- my answer is as I 11 stated, that I did not get a complaint from 12 Ms. Phillips that met the requirements of the 13 antidiscrimination policy and it's definition -- 14 definition sections.</p> <p>15 Q. And just again for my understanding, 16 what was it that Ms. Phillips said to you 17 that you didn't believe rose to the level of 18 a discrimination complaint under the policy?</p> <p>19 A. There were four instances which are 20 all recorded in Ms. Phillips' affirmative 21 action complaint that -- that I -- that I 22 would point to. That I would -- yeah, there 23 were those four instances that are reflected 24 in her complaint.</p> <p>25 Q. Okay. What were they?</p>	<p style="text-align: right;">163</p> <p>1 DAVIS, Ph.D.</p> <p>2 know why -- now, did Ms. Phillips say, when 3 she described this conversation, that she 4 believed it to be offensive?</p> <p>5 A. Yes, I believe she said the word 6 "offensive."</p> <p>7 Q. And did she say it was offensive to 8 her as an African-American woman?</p> <p>9 A. I don't recall specifically, but 10 perhaps.</p> <p>11 Q. And she felt like this was 12 discriminatory; is that right?</p> <p>13 A. I don't believe that she ever used 14 the word "discriminatory."</p> <p>15 Q. So, she just said, you know, 16 Ms. Cowan said something about the back of 17 the bus and I was offended, but it wasn't a 18 discriminatory statement; is that -- do you 19 really want us to believe that?</p> <p>20 A. Well, you can believe what you would 21 like to believe. But I can tell you that 22 Marjorie reported to me that that was 23 offensive and she probably said, although I 24 cannot recall the specifics of that 25 conversation, that it was offensive to her</p>
<p style="text-align: right;">162</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. So the first one was an incident 3 involving Brenda Cowan and Umilta Alsop. 4 Marjorie overhearing a conversation -- a 5 fragment of a conversation between the two of 6 them. I was not present.</p> <p>7 The second one was --</p> <p>8 Q. What was the comment that 9 Ms. Phillips told you about?</p> <p>10 A. Again, I was not there; but the 11 report to me was from both Brenda, who is 12 white, and Umilta, who is black, and 13 Marjorie; so separate reports. Saying that 14 Umilta and Brenda were speaking in the open 15 part of the office and joking about 16 something, and Marjorie came in; and as I 17 understand it, Brenda said something to the 18 effect of why don't you come and join us in 19 the back of the school bus?</p> <p>20 Q. In the back of the bus?</p> <p>21 A. I -- I recall the words "school bus" 22 as coming up in the reports to me; but I -- I 23 can't be sure.</p> <p>24 Q. Okay.</p> <p>25 So, "the back of the bus." Do you</p>	<p style="text-align: right;">164</p> <p>1 DAVIS, Ph.D.</p> <p>2 specifically as a black person.</p> <p>3 Q. Right.</p> <p>4 And because you know the reference 5 to "back of the bus" relates to Jim Crow, 6 right?</p> <p>7 A. I don't know that the reference to 8 "back of the bus" in this instance, this 9 fragment of a conversation that Ms. Phillips 10 overheard, refers to Jim Crow in any way.</p> <p>11 Q. Have you ever heard of Rosa Parks?</p> <p>12 A. Yes, sir.</p> <p>13 Q. When did you first hear about Rosa 14 Parks?</p> <p>15 A. When I was a child.</p> <p>16 Q. And what do you remember about Rosa 17 Parks that made it so that you as a child 18 learned about her?</p> <p>19 A. I know about Rosa Parks as the civil 20 rights hero who got on a bus.</p> <p>21 Q. "Got on a bus"?</p> <p>22 A. On a segregated bus and broke 23 barriers by doing so.</p> <p>24 Q. Okay. A segregated bus.</p> <p>25 And why in your memory or retelling</p>

<p style="text-align: right;">165</p> <p>1 DAVIS, Ph.D.</p> <p>2 of the Rosa Park's story, why was the bus</p> <p>3 segregated?</p> <p>4 A. Because as -- as it was case in this</p> <p>5 country buses were segregated so that black</p> <p>6 people, people of color, were made to sit at</p> <p>7 that time back of the bus.</p> <p>8 Q. Oh. The "back of the bus." That's</p> <p>9 where the black folks had to sit, right?</p> <p>10 A. Historically, yes.</p> <p>11 Q. Oh. But you couldn't see how that</p> <p>12 might be perceived as offensive to</p> <p>13 Ms. Phillips?</p> <p>14 A. What I --</p> <p>15 Q. -- is that right?</p> <p>16 A. No --</p> <p>17 Q. -- is that right?</p> <p>18 A. What I had a report of was a white</p> <p>19 woman and a black woman joking and laughing,</p> <p>20 and Marjorie coming in and overhearing a</p> <p>21 fragment of their conversation in which the</p> <p>22 phrase "join us at the back of the bus" was</p> <p>23 used.</p> <p>24 Q. And so you didn't think it was your</p> <p>25 responsibility to bring that to the attention</p>	<p style="text-align: right;">167</p> <p>1 DAVIS, Ph.D.</p> <p>2 it, and I believe she spoke to Brenda Cowan</p> <p>3 directly about it --</p> <p>4 Q. Did you ask her to speak to Brenda</p> <p>5 Cowan?</p> <p>6 A. I would not have asked her to do it.</p> <p>7 I would have suggested that in order to get</p> <p>8 the fuller picture of what was being said,</p> <p>9 rather than just the fragment of what she</p> <p>10 overheard, that she have a conversation with</p> <p>11 Brenda. But I would not have required in any</p> <p>12 way that she do so.</p> <p>13 Q. Well, one thing you did not do is</p> <p>14 report it to the Affirmative Action Office,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And that is because you believed</p> <p>18 that this did not rise to the level that was</p> <p>19 required for you to have to report it, right?</p> <p>20 A. That's correct.</p> <p>21 Q. All right.</p> <p>22 MR. SELLS: Can we go to</p> <p>23 Exhibit 3.</p> <p>24 (The image is shared on the</p> <p>25 computer screen.)</p>
<p style="text-align: right;">166</p> <p>1 DAVIS, Ph.D.</p> <p>2 of the affirmative action officer; is that</p> <p>3 right?</p> <p>4 A. Under the policy and the terms of</p> <p>5 the policy, the definitions included in the</p> <p>6 policy, I did not.</p> <p>7 Q. Okay.</p> <p>8 So what did you do -- well, let me</p> <p>9 ask you that. When Ms. Phillips told you</p> <p>10 about that incident, was that her only</p> <p>11 complaint or did she come to you with</p> <p>12 multiple complaints at the same time?</p> <p>13 A. I don't recall.</p> <p>14 Q. Okay.</p> <p>15 But this was one of the complaints</p> <p>16 that she made, correct?</p> <p>17 A. This was a complaint -- this</p> <p>18 complaint, I believe, goes back to 2014; so</p> <p>19 this complaint, I believe, was made on its</p> <p>20 own.</p> <p>21 Q. Okay.</p> <p>22 What did you do when she came to you</p> <p>23 with that complaint?</p> <p>24 A. I listened to her respectfully. I</p> <p>25 heard what her reaction was. We talked about</p>	<p style="text-align: right;">168</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. SELLS: If we could go to</p> <p>3 page 9. Go to "Complaint and</p> <p>4 investigation procedure where an</p> <p>5 employee is the Respondent."</p> <p>6 Q. This is the section of the</p> <p>7 antidiscrimination policy that we looked at</p> <p>8 earlier that deals with the "complaint and</p> <p>9 investigation procedure where an employee is</p> <p>10 the Respondent." Is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 So, what it says is "Any person who</p> <p>14 believes they may have been a victim of or</p> <p>15 believes they may have witnessed</p> <p>16 discrimination, harassment or retaliation</p> <p>17 committed by an employee should report the</p> <p>18 incident to the affirmative action officer</p> <p>19 in the Office of Compliance and Audit."</p> <p>20 MR. DRANOFF: I'm not reading</p> <p>21 that same thing, Derek.</p> <p>22 MR. SELLS: What?</p> <p>23 MR. DRANOFF: I'm trying to --</p> <p>24 MR. SELLS: It says "Office of</p> <p>25 Compliance and Audit at 212-217 --"</p>

<p style="text-align: right;">169</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: I see that. I</p> <p>3 see that.</p> <p>4 MR. SELLS: "-- or 333 7th</p> <p>5 Avenue, 16th floor.</p> <p>6 Q. "Alternatively, such incidents may</p> <p>7 be reported to F.I.T.'s Office of Human</p> <p>8 Resources or any senior administrator, dean,</p> <p>9 department director, department chairperson</p> <p>10 or coordinator or any other person with</p> <p>11 supervisory responsibility.</p> <p>12 Although such complaints need not be</p> <p>13 in writing, F.I.T. strongly encourages</p> <p>14 individuals to file a written complaint. Any</p> <p>15 person with supervisory responsibility who</p> <p>16 receives a complaint formally or informally</p> <p>17 in writing, orally or otherwise, of</p> <p>18 discrimination, harassment or retaliation</p> <p>19 must report such information to the</p> <p>20 affirmative action officer immediately."</p> <p>21 So you understand that is the</p> <p>22 policy, right?</p> <p>23 A. I do.</p> <p>24 Q. Okay.</p> <p>25 So, Ms. Phillips believed that she</p>	<p style="text-align: right;">171</p> <p>1 DAVIS, Ph.D. .</p> <p>2 doesn't say that they have to fit the</p> <p>3 definition of discrimination or retaliation</p> <p>4 or harassment. It just says if the "employee</p> <p>5 believes that they have." Will you agree</p> <p>6 with me on that?</p> <p>7 A. Yes. But that --</p> <p>8 Q. Okay. Okay. Yes, you agree.</p> <p>9 It doesn't say that any person who</p> <p>10 Dean Davis believes faced discrimination,</p> <p>11 harassment or retaliation has to be reported</p> <p>12 to the affirmative action officer, right? It</p> <p>13 doesn't say that, does it?</p> <p>14 A. It says, "Any person who believes</p> <p>15 they have -- may have been a victim of or who</p> <p>16 believes they may have witnessed</p> <p>17 discrimination --"</p> <p>18 Q. I understand that. I just read</p> <p>19 that.</p> <p>20 I said, it does not say that any</p> <p>21 person that Dean Davis believes may have been</p> <p>22 a victim of or who believes they may have</p> <p>23 witnessed discrimination, harassment or</p> <p>24 retaliation; it doesn't say that, right?</p> <p>25 A. No, but the --</p>
<p style="text-align: right;">170</p> <p>1 DAVIS, Ph.D.</p> <p>2 was either a victim of or a witness to a</p> <p>3 discriminatory statement regarding black</p> <p>4 people being at the back of the bus; isn't</p> <p>5 that right?</p> <p>6 A. I don't believe that's correct.</p> <p>7 Q. You don't believe that was correct --</p> <p>8 A. Well, actually I can't say what</p> <p>9 Ms. Phillips's believed.</p> <p>10 Q. You can't say --</p> <p>11 A. I --</p> <p>12 Q. And so in that situation, it's your</p> <p>13 understanding of this policy that you don't</p> <p>14 have to report it even though you don't know</p> <p>15 what Ms. Phillips had in her mind; is that</p> <p>16 right?</p> <p>17 A. I think that the key issue here is</p> <p>18 the terminology "discrimination, harassment</p> <p>19 or retaliation." As you looked at the</p> <p>20 definitions of those terms, I believe you</p> <p>21 will find a -- a differential between what an</p> <p>22 employee's view of discrimination, harassment</p> <p>23 or retaliation can be versus what is policy.</p> <p>24 Q. I see. This says that "any person</p> <p>25 who believes they may have been..." It</p>	<p style="text-align: right;">172</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. No, it doesn't. Okay --</p> <p>3 A. No. However, the paragraph --</p> <p>4 Q. There is no "however." I'm not</p> <p>5 asking you about the paragraph. I am asking</p> <p>6 you whether it says any person who Dean Davis</p> <p>7 believes; you understand your name does not</p> <p>8 appear in there as to whose belief controls;</p> <p>9 it's not your name in there, is it?</p> <p>10 A. It is not my name.</p> <p>11 Q. Okay.</p> <p>12 So, in a situation where an employee</p> <p>13 believes that they have been a witness to or</p> <p>14 a victim of discrimination, it's the dean's</p> <p>15 requirement to inform the affirmative action</p> <p>16 officer immediately, right?</p> <p>17 A. If the dean gets a report of</p> <p>18 discrimination, harassment or retaliation --</p> <p>19 Q. Is that the way you read it? Where</p> <p>20 does it say "if the dean gets a complaint"?</p> <p>21 Doesn't it say, "Any person who believes"?</p> <p>22 "Any person who believes" whether or not the</p> <p>23 belief is true or not, whether the --</p> <p>24 MR. DRANOFF: Derek. Derek you</p> <p>25 are not letting the witness -- you</p>

<p>1 DAVIS, Ph.D.</p> <p>2 the witness' answer. Let her</p> <p>3 respond, please.</p> <p>4 A. Yes, I think that the key words here</p> <p>5 are "discrimination, harassment or</p> <p>6 retaliation." Not the word "believes."</p> <p>7 Q. You read it without the word</p> <p>8 believes -- that's --</p> <p>9 A. I --</p> <p>10 MR. DRANOFF: She is drawing</p> <p>11 your attention to last sentence,</p> <p>12 Derek.</p> <p>13 A. I'm drawing your attention to the</p> <p>14 last sentence. Discrimination, harassment or</p> <p>15 retaliation. Ms. Phillips' report of the</p> <p>16 incident was not aligned with the definitions</p> <p>17 of any of those things, nor do I recall her</p> <p>18 using -- speaking about "discrimination" in</p> <p>19 this instance.</p> <p>20 Q. Right. Got it.</p> <p>21 So, "back of the bus," Rosa Parks,</p> <p>22 segregated bus, nothing do with</p> <p>23 discrimination, right?</p> <p>24 A. Ms. Phillips never raised Rosa Parks</p> <p>25 or any of the things that you have brought</p>	<p>173</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. These, again --</p> <p>3 Q. -- racial issue?</p> <p>4 A. -- action complaints -- and I'm</p> <p>5 making them out of sequence -- but I believe</p> <p>6 that the next one was when Kyle Farmer, who</p> <p>7 was in the office, made a remark about</p> <p>8 Ms. Phillips who was putting on her hat</p> <p>9 saying to her, "You -- you look like you're</p> <p>10 going to the hood."</p> <p>11 Q. "You look like you're going to the</p> <p>12 hood." Okay.</p> <p>13 What did Ms. Phillips say about</p> <p>14 that?</p> <p>15 A. I believe that Ms. Phillips -- when</p> <p>16 she reported it to me, is that your question?</p> <p>17 Q. Yes.</p> <p>18 A. She took offense at the comment --</p> <p>19 Q. Why --</p> <p>20 A. -- of -- well, I can't speak to why</p> <p>21 Ms. Phillips took offense to it. She told me</p> <p>22 that she took offense to the phrase, "look</p> <p>23 like you're going the hood."</p> <p>24 Q. Did you ask her why?</p> <p>25 A. I don't recall, specifically.</p>
<p>174</p> <p>1 DAVIS, Ph.D.</p> <p>2 into this discussion when we spoke.</p> <p>3 Q. Oh, no? She said "back of the bus,"</p> <p>4 right?</p> <p>5 A. Ms. Phillips did not say "back of</p> <p>6 the bus." Ms. Phillips overheard Brenda</p> <p>7 Cowan speaking to you Umilta Alsop. She</p> <p>8 overheard, in my understanding, a fragment of</p> <p>9 a sentence that included the phrase "back of</p> <p>10 the bus." Join us -- meaning Brenda, a white</p> <p>11 woman, and Umilta a black woman -- here in</p> <p>12 the back of the bus.</p> <p>13 Q. Okay. Okay.</p> <p>14 So that's the way you took it? Oh,</p> <p>15 no discrimination there. No need to report.</p> <p>16 Right?</p> <p>17 A. Under the provisions of the policy</p> <p>18 and the definitional description under the</p> <p>19 policy, that's correct.</p> <p>20 Q. Okay.</p> <p>21 MR. SELLS: We can take this</p> <p>22 down.</p> <p>23 Q. Well, what was the next complaint</p> <p>24 that you heard from Ms. Phillips as it</p> <p>25 related to a --</p>	<p>176</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Well, what's your understanding of</p> <p>3 "the hood"? What's that mean?</p> <p>4 A. My understanding of "the hood" is</p> <p>5 there is -- there is -- it could be multiple</p> <p>6 definitions of what constitutes the hood.</p> <p>7 Q. Okay.</p> <p>8 So here you have Ms. Phillips, an</p> <p>9 African-American woman, hearing from your</p> <p>10 colleague, Mr. Farmer, who is a white male,</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Saying to Ms. Phillips, you need to</p> <p>14 go -- "you look like you're going the hood."</p> <p>15 Right?</p> <p>16 A. I don't know that that was -- that</p> <p>17 sentence was delivered with the affect that</p> <p>18 you just provided.</p> <p>19 Q. Would it make a difference?</p> <p>20 A. It could.</p> <p>21 Q. How?</p> <p>22 A. It could have been a joke. I don't</p> <p>23 know. I don't know what was Kyle's intent in</p> <p>24 saying that.</p> <p>25 Q. But you didn't find that to be</p>

<p style="text-align: right;">177</p> <p>1 DAVIS, Ph.D.</p> <p>2 discriminatory, harassment or retaliatory</p> <p>3 either; is that right?</p> <p>4 A. Under the terms of the policy, no.</p> <p>5 Q. Got it.</p> <p>6 So, you didn't report that to</p> <p>7 Affirmative Action, did you?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay.</p> <p>10 What did you do instead?</p> <p>11 A. I did — I again spoke with</p> <p>12 Marjorie, and I spoke with Kyle separately,</p> <p>13 to try to understand the situation. Without</p> <p>14 my involvement, Kyle, I'm told, apologized</p> <p>15 profusely to Marjorie. Went to the to the</p> <p>16 extra effort of making a hat for Marjorie as</p> <p>17 a sort of token of, you know, apology to her;</p> <p>18 and that they resolved the issue between the</p> <p>19 two of them.</p> <p>20 Q. Why did Mr. Farmer -- why did he</p> <p>21 apologize?</p> <p>22 A. I -- I -- I believe — again, I was</p> <p>23 not there, so I don't know definitively. But</p> <p>24 I believe he apologized because Marjorie was</p> <p>25 offended. He did not intend to offend her.</p>	<p style="text-align: right;">179</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. My self-interest had nothing to do</p> <p>3 with it. I acted in accordance with the</p> <p>4 policy and the definitions laid out therein.</p> <p>5 Q. Got it.</p> <p>6 What was the next incident?</p> <p>7 A. I believe that the next incident was</p> <p>8 Ms. Barton coming back from a funeral of a</p> <p>9 elderly relative -- and again these are</p> <p>10 detailed in Ms. Phillips' complaint, so I'm</p> <p>11 recalling to the best of my ability what is</p> <p>12 contained therein, what I recall from the</p> <p>13 incident itself.</p> <p>14 So Marilyn had come back from the</p> <p>15 funeral of an elderly relative and was</p> <p>16 relaying the anecdote about that funeral to a</p> <p>17 student aide, Julia, and was telling her</p> <p>18 something about finding out that one of her</p> <p>19 uncles, I think, had a birth date that was a</p> <p>20 year earlier than anybody had believed it to</p> <p>21 be.</p> <p>22 So it had come out in the funeral</p> <p>23 that he had been born before his parents were</p> <p>24 married, and Marilyn apparently -- and again,</p> <p>25 I was not present -- Marilyn apparently said</p>
<p style="text-align: right;">178</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Why was Ms. Phillips offended?</p> <p>3 A. I don't know other than what I told</p> <p>4 you.</p> <p>5 Q. So, she didn't tell you that she</p> <p>6 thought this was racially offensive that he</p> <p>7 said to her, simply because she was putting</p> <p>8 on her hat, that she looked like she was</p> <p>9 going to hood? You don't know why she was</p> <p>10 offended by that?</p> <p>11 A. I can't speak to Ms. Phillips'</p> <p>12 emotions at that -- in that incident.</p> <p>13 Q. Got it.</p> <p>14 But one thing you certainly didn't</p> <p>15 do was report to the Affirmative Action --</p> <p>16 A. That's --</p> <p>17 Q. -- as the policy said you should,</p> <p>18 right?</p> <p>19 A. No, that's incorrect. I acted in --</p> <p>20 I acted in --</p> <p>21 Q. Your own self-interest, right?</p> <p>22 A. Oh. No, sir.</p> <p>23 MR. DRANOFF: You are not</p> <p>24 letting her finish the answer, Derek.</p> <p>25 Q. Go ahead.</p>	<p style="text-align: right;">180</p> <p>1 DAVIS, Ph.D.</p> <p>2 something like, "Well, I guess that makes him</p> <p>3 a bastard," or she was relating that somebody</p> <p>4 at the funeral said that.</p> <p>5 And it's my understanding that</p> <p>6 Ms. Phillips came in during that conversation</p> <p>7 in the open office and overheard the use of</p> <p>8 the term "bastard" and took offense at the</p> <p>9 use of that term and later came to talk to me</p> <p>10 about that.</p> <p>11 Q. Did you report that to HR -- sorry.</p> <p>12 Did you report that to Affirmative</p> <p>13 Action?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. Because again, it did not meet the</p> <p>17 requirements laid out in the policy and it's</p> <p>18 definitions.</p> <p>19 Q. Okay.</p> <p>20 Were there any other complaints that</p> <p>21 she raised?</p> <p>22 A. I think I'm forgetting one. I'm</p> <p>23 sorry. I just can't recall. If you could</p> <p>24 just --</p> <p>25 MR. SELLS: Why don't we bring</p>

<p>1 DAVIS, Ph.D.</p> <p>2 up Exhibit 29.</p> <p>3 (The image is shared on the</p> <p>4 computer screen.)</p> <p>5 MR. SELLS: Let's just scroll --</p> <p>6 A. Oh, yes. I'm sorry. I see it.</p> <p>7 MR. SELLS: Keep scrolling up.</p> <p>8 Q. Which one?</p> <p>9 A. The comment about the 3/5th rule.</p> <p>10 Q. So, Ms. Phillips brought this to you</p> <p>11 as well, right?</p> <p>12 A. She did.</p> <p>13 Q. Okay.</p> <p>14 So what happened?</p> <p>15 A. Again, I listened respectfully and</p> <p>16 attentively as she told me her concerns and</p> <p>17 the fact that she had, again, overheard a</p> <p>18 fragment of a conversation, not the entire</p> <p>19 conversation, and that she took offense at</p> <p>20 any comment about the 3/5th's rule happening</p> <p>21 in the office; and I explained to her that my</p> <p>22 understanding was this was simply a</p> <p>23 discussion about history and facts. This is</p> <p>24 a part of American history, and I believe</p> <p>25 that this topic of discussion -- again, I was</p>	<p>181</p> <p>1 DAVIS, Ph.D.</p> <p>2 you were interviewed as part of this process,</p> <p>3 right?</p> <p>4 A. I was.</p> <p>5 Q. Okay.</p> <p>6 Do you remember when you were</p> <p>7 interviewed?</p> <p>8 A. It was late -- I believe I was the</p> <p>9 last person because of scheduling issues. It</p> <p>10 was probably in May.</p> <p>11 Q. May of 2018?</p> <p>12 A. I believe that's correct.</p> <p>13 Q. Okay.</p> <p>14 And what is written here for</p> <p>15 Respondent 4; is that accurate?</p> <p>16 A. I believe it is.</p> <p>17 Q. Okay. So then where it says,</p> <p>18 "Respondent 4 stated that when Complainant</p> <p>19 brought forth complaints against Respondent</p> <p>20 3, she instructed the Complainant to speak</p> <p>21 with Respondent 3 and come back to speak with</p> <p>22 her if she had additional issues she wanted</p> <p>23 to discuss."</p> <p>24 Is that right?</p> <p>25 A. I would -- I would not be certain of</p>
<p>182</p> <p>1 DAVIS, Ph.D.</p> <p>2 not there -- but that seems to have been what</p> <p>3 the discussion between Ms. Barton and the</p> <p>4 student aide was.</p> <p>5 And I don't believe that the</p> <p>6 Complainant disputes that.</p> <p>7 Q. That who, "the Complainant"?</p> <p>8 A. Ms. Phillips. I'm looking at the</p> <p>9 language that is on the screen.</p> <p>10 Q. Okay.</p> <p>11 MR. SELLS: Can we scroll down.</p> <p>12 Stop.</p> <p>13 Q. Did there come a time when you</p> <p>14 learned that a complaint was brought against</p> <p>15 you for failing to adhere to the</p> <p>16 antidiscrimination policies?</p> <p>17 A. No complaint was brought against me</p> <p>18 for that.</p> <p>19 Q. No?</p> <p>20 A. To my knowledge.</p> <p>21 Q. So, you heard Ms. Kekana when she</p> <p>22 testified about Respondent 4; you remember</p> <p>23 that?</p> <p>24 A. Yeah.</p> <p>25 Q. And you remember Respondent 4 and</p>	<p>184</p> <p>1 DAVIS, Ph.D.</p> <p>2 the word "instructed"; but certainly in the</p> <p>3 workplace having Ms. Barton and Ms. Phillips</p> <p>4 have a conversation to clear this up was a</p> <p>5 goal -- an effort at resolution and better</p> <p>6 understanding of what Ms. Phillips overheard.</p> <p>7 Q. Okay.</p> <p>8 And is it true that -- by the way,</p> <p>9 you understand that Respondent 3 is Marilyn</p> <p>10 Barton, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 So, was it also true that you told</p> <p>14 Ms. Phillips that you would speak to Marilyn</p> <p>15 Barton too; is that right?</p> <p>16 A. That's true.</p> <p>17 Q. And did you speak to Marilyn Barton?</p> <p>18 A. I recall that I did.</p> <p>19 Q. And you spoke to her about this</p> <p>20 complaint, correct?</p> <p>21 A. I did not speak to her about this</p> <p>22 complaint as it's laid out here. I spoke to</p> <p>23 her about the fact that Marjorie had come to</p> <p>24 me with -- with her concerns about what she</p> <p>25 had overheard in the office, and I asked</p>

<p style="text-align: right;">185</p> <p>1 DAVIS, Ph.D.</p> <p>2 Marilyn to give me context for that fragment</p> <p>3 of the conversation that Ms. Phillips had</p> <p>4 heard.</p> <p>5 Q. But again, with regard to anything</p> <p>6 that Ms. Phillips complained to you about</p> <p>7 that she was offended by, you never brought</p> <p>8 that to the Affirmative Action Office, right?</p> <p>9 A. That's correct, per -- per the</p> <p>10 policy and its definitions.</p> <p>11 MR. SELLS: Okay. We can take</p> <p>12 down the document.</p> <p>13 Q. So when Ms. Phillips came to you</p> <p>14 with all four of her complaints regarding</p> <p>15 Ms. Barton, regarding Mr. Farmer and</p> <p>16 regarding Ms. Cowan, you didn't see any of</p> <p>17 those complaints rising to the level of</p> <p>18 discrimination, harassment or retaliation --</p> <p>19 MR. DRANOFF: Objection --</p> <p>20 Q. -- is that right?</p> <p>21 A. Those complaints were brought to me</p> <p>22 over a period of, I believe, four years; and</p> <p>23 the answer is yes, I did not take them to the</p> <p>24 Affirmative Action Office per the policy and</p> <p>25 it's definition.</p>	<p style="text-align: right;">187</p> <p>1 DAVIS, Ph.D.</p> <p>2 Respondent 4 will always side against people</p> <p>3 of color."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. All right.</p> <p>7 MR. SELLS: We can take it</p> <p>8 down.</p> <p>9 Q. So, let's see. Umilta Alsop,</p> <p>10 Ms. Phillips, Anton Baptiste; you never tried</p> <p>11 to get them a reclassification or a raise,</p> <p>12 right?</p> <p>13 A. Again, it is outside my power or it</p> <p>14 was outside of my power as a dean to get</p> <p>15 either of those things for them. I had the</p> <p>16 power to trigger the process by sending a</p> <p>17 recommendation to my supervisor.</p> <p>18 Q. Right.</p> <p>19 Never did that; but you were able to</p> <p>20 do it for Marilyn Barton, who's not a person</p> <p>21 of color, right?</p> <p>22 A. That's correct.</p> <p>23 Q. Got it.</p> <p>24 Ms. Phillips raises four allegations</p> <p>25 of discrimination to you and you side on the</p>
<p style="text-align: right;">186</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. And instead, Ms. Phillips brought</p> <p>3 them to the Affirmative Action Office</p> <p>4 herself, right?</p> <p>5 A. Yes.</p> <p>6 Q. And not only did she bring those</p> <p>7 complaints to the Affirmative Action Office,</p> <p>8 but she also complained about you always</p> <p>9 siding with Caucasians over</p> <p>10 African-Americans, right?</p> <p>11 MR. DRANOFF: Object to the</p> <p>12 form.</p> <p>13 A. I don't know what she spoke to the</p> <p>14 Affirmative Action Office about.</p> <p>15 Q. Well, we just saw in the last</p> <p>16 exhibit, Exhibit 29, where that was a</p> <p>17 statement that she made?</p> <p>18 A. Actually, we did not look at that</p> <p>19 statement --</p> <p>20 Q. Okay. Let's pull it back up.</p> <p>21 MR. SELLS: Can we put up</p> <p>22 Exhibit 29 and go to Respondent 4.</p> <p>23 (The image is shared on the</p> <p>24 computer screen.)</p> <p>25 Q. It says, "Complainant alleges that</p>	<p style="text-align: right;">188</p> <p>1 DAVIS, Ph.D.</p> <p>2 favor of Ms. Cowan, Mr. Farmer and Ms. Barton</p> <p>3 who are all white, right?</p> <p>4 A. No.</p> <p>5 MR. DRANOFF: Object to the</p> <p>6 form.</p> <p>7 A. Not correct. I did not side with</p> <p>8 anyone. I listened to everyone involved in</p> <p>9 those four incidents, and I made the</p> <p>10 determination that in each case the offensive</p> <p>11 language or behavior, under F.I.T.'s policy,</p> <p>12 it did not merit or did not trigger</p> <p>13 requirement to report to Affirmative Action.</p> <p>14 Q. Ms. Barton, she's white, right?</p> <p>15 A. That's correct.</p> <p>16 Q. Mr. Farmer is white, right?</p> <p>17 A. That's correct.</p> <p>18 Q. Ms. Cowan is white?</p> <p>19 A. That's correct.</p> <p>20 Q. Once the Affirmative Action Office</p> <p>21 gets the complaint from Ms. Phillips, there's</p> <p>22 an investigation that occurs, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that investigation started in</p> <p>25 March of 2018, right?</p>

<p style="text-align: right;">189</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I can't say definitively.</p> <p>3 Q. Okay.</p> <p>4 Well, you want to pull up the</p> <p>5 exhibit again?</p> <p>6 A. I'm just saying, I was not part of</p> <p>7 the investigation.</p> <p>8 Q. All right. Whatever. We don't have</p> <p>9 to do that.</p> <p>10 Anyway, the point is that by May of</p> <p>11 2018 you knew that this investigation was</p> <p>12 taking place, correct?</p> <p>13 A. I knew the part of it that related</p> <p>14 to me. I knew the part to which I was made</p> <p>15 to respond.</p> <p>16 Q. Right.</p> <p>17 And that had to do with Marilyn</p> <p>18 Barton, right? With Marilyn Barton and the</p> <p>19 3/5th of the person, it had to do with</p> <p>20 Marilyn Barton and the comments about being</p> <p>21 illegitimate or a bastard, right?</p> <p>22 A. No. I was asked to respond only to</p> <p>23 the 3/5ths -- the issue of the 3/5ths</p> <p>24 provision.</p> <p>25 Q. All right.</p>	<p style="text-align: right;">191</p> <p>1 DAVIS, Ph.D.</p> <p>2 question again? I lost track.</p> <p>3 Q. Was it about the time that the memo</p> <p>4 that we have just read from, the one that was</p> <p>5 written in October of 2019, was that about</p> <p>6 the time that you learned that the</p> <p>7 investigation had concluded?</p> <p>8 A. I am not sure when I received a copy</p> <p>9 of that memo.</p> <p>10 Q. All right.</p> <p>11 MR. DRANOFF: Can we take just</p> <p>12 five minutes?</p> <p>13 MR. SELLS: Yes, of course.</p> <p>14 MR. MENKEN: I need to take a</p> <p>15 call from 4:00 to 4:10.</p> <p>16 MR. SELLS: That's fine. So</p> <p>17 you want to come back, you want to</p> <p>18 say 3:40. Then we'll go for another</p> <p>19 20 minutes.</p> <p>20 MR. DRANOFF: I'm going to be</p> <p>21 less than five minutes.</p> <p>22 MR. SELLS: We'll come back at</p> <p>23 3:35.</p> <p>24 MR. MENKEN: Thank you.</p> <p>25 MR. SELLS: All right.</p>
<p style="text-align: right;">190</p> <p>1 DAVIS, Ph.D.</p> <p>2 Well, the point is you knew that a</p> <p>3 complaint had been made by Ms. Phillips</p> <p>4 against you, right?</p> <p>5 A. I knew that I was being asked to be</p> <p>6 a Respondent in that complaint, yes.</p> <p>7 Q. And that was in May of 2018,</p> <p>8 correct?</p> <p>9 A. I believe it was the end of May</p> <p>10 2018.</p> <p>11 Q. And you knew that Ms. Barton had</p> <p>12 been implicated in that complaint by</p> <p>13 Ms. Phillips too, correct?</p> <p>14 A. Well, Marilyn was the one who made</p> <p>15 the comment about the 3/5ths rule, so yes.</p> <p>16 Q. Okay.</p> <p>17 When did you ever learn that that</p> <p>18 investigation was completed?</p> <p>19 A. It was a very long time before I</p> <p>20 knew that that investigation was completed.</p> <p>21 I can't say specifically.</p> <p>22 Q. All right.</p> <p>23 Was it about the time that that</p> <p>24 closeout memo was written in October of 2019?</p> <p>25 A. I'm sorry? Could you repeat your</p>	<p style="text-align: right;">192</p> <p>1 DAVIS, Ph.D.</p> <p>2 (Whereupon, a brief recess was</p> <p>3 taken at 3:29 p.m.; after which, the</p> <p>4 proceeding continued at 3:35 p.m. as</p> <p>5 follows.)</p> <p>6 MR. SELLS: Back on the record.</p> <p>7 Q. Now, Ms. Davis, when you indicated</p> <p>8 that none of Ms. Phillips' complaints rose to</p> <p>9 the level that you felt you needed to see in</p> <p>10 order to report it to the Affirmative Action</p> <p>11 Office, was that based on some training that</p> <p>12 you had received?</p> <p>13 A. That was -- that was based on my</p> <p>14 reading of the policy and its provisions.</p> <p>15 Q. Okay.</p> <p>16 Did you ask anybody whether or not</p> <p>17 you're reading was correct?</p> <p>18 A. I don't recall specifically doing</p> <p>19 that.</p> <p>20 Q. All right.</p> <p>21 So, you had this mental image as you</p> <p>22 were reading the policy that, you know, I</p> <p>23 just don't see it. I don't see, you know, a</p> <p>24 comment about "the hood," or the comment</p> <p>25 about "the back of the bus," or a comment</p>

<p style="text-align: right;">193</p> <p>1 DAVIS, Ph.D.</p> <p>2 about "3/5ths of a person" rising to the</p> <p>3 level of discrimination or harassment or</p> <p>4 retaliation that was necessary to report it?</p> <p>5 A. The policy has substantial and</p> <p>6 substantive definitional sections that</p> <p>7 provide guidance in making those judgements;</p> <p>8 and as I have explained, the comments that</p> <p>9 you have just repeated back were fragments --</p> <p>10 overheard fragments in most cases of</p> <p>11 conversations that had more context around</p> <p>12 them.</p> <p>13 Q. How did you learn that the fragments</p> <p>14 had more context around them? How did you</p> <p>15 know that?</p> <p>16 A. Because they were simply fragments</p> <p>17 of conversations. Both Ms. Phillips and</p> <p>18 other -- the other people involved in those</p> <p>19 incidents reported them to me as Marjorie</p> <p>20 coming in and overhearing things, parts of</p> <p>21 conversations. Marjorie herself reported</p> <p>22 that to me, that she overheard parts of the</p> <p>23 conversations; so that's how.</p> <p>24 Q. So everybody that Ms. Phillips</p> <p>25 complained about, you spoke to and got their</p>	<p style="text-align: right;">195</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No --</p> <p>3 Q. You didn't investigate it?</p> <p>4 A. I did not.</p> <p>5 Q. Okay.</p> <p>6 You just spoke to the people that</p> <p>7 raised the complaints and you spoke to the</p> <p>8 people who the complaints were made about --</p> <p>9 A. I did not.</p> <p>10 Q. -- is that right?</p> <p>11 A. I spoke to people who were -- in the</p> <p>12 case of the employee incidents relating to</p> <p>13 Marjorie's formal complaint, I spoke to the</p> <p>14 people who were involved in those incidents</p> <p>15 in realtime around those incidents to</p> <p>16 understand what had happened. That was not</p> <p>17 an investigation, those were conversations.</p> <p>18 And in the case of the students, I</p> <p>19 met with the students at their request, as we</p> <p>20 have already discussed.</p> <p>21 Q. Now by doing so, you didn't allow</p> <p>22 the Affirmative Action Office to get the</p> <p>23 first opportunity to speak to the people who</p> <p>24 were involved in the complaints, right?</p> <p>25 A. My understanding is that the person</p>
<p style="text-align: right;">194</p> <p>1 DAVIS, Ph.D.</p> <p>2 side of the story as well; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Got it.</p> <p>5 Just like you did with the students</p> <p>6 who complained about the fashion show --</p> <p>7 A. The students --</p> <p>8 Q. -- you met with them and you met</p> <p>9 with Mr. Farmer, but you didn't report it to</p> <p>10 the affirmative action coordinator, correct?</p> <p>11 A. The students did not complain about</p> <p>12 the fashion show. The students raised</p> <p>13 concerns about the program, the culture in</p> <p>14 the program, the accessories, possible --</p> <p>15 possible issues that were arising around the</p> <p>16 accessories, as we have described already</p> <p>17 today.</p> <p>18 Q. Right.</p> <p>19 But in all of those situations you</p> <p>20 did not see it as rising to the level of</p> <p>21 discrimination, harassment or retaliation?</p> <p>22 A. That's correct.</p> <p>23 Q. And so you investigated it yourself --</p> <p>24 A. That's --</p> <p>25 Q. -- just to make sure, correct?</p>	<p style="text-align: right;">196</p> <p>1 DAVIS, Ph.D.</p> <p>2 who has a complaint also has the right to go</p> <p>3 directly to the Affirmative Action Office,</p> <p>4 and I believe that is in the policy that we</p> <p>5 just looked at recently -- I mean, within the</p> <p>6 last hour.</p> <p>7 Q. What's that got to do with anything?</p> <p>8 A. I'm just -- that has do with your</p> <p>9 comment about --</p> <p>10 Q. It's a question --</p> <p>11 A. Oh, sorry. Your question about --</p> <p>12 actually, it was more of a comment about the</p> <p>13 Affirmative Action Office not having the</p> <p>14 first opportunity to interview people.</p> <p>15 Q. Right.</p> <p>16 So anybody that has brought a</p> <p>17 complaint that touches upon race or race</p> <p>18 insensitivity, you spoke to them first and</p> <p>19 the people they complained about you spoke to</p> <p>20 them first before the Affirmative Action</p> <p>21 Office did; is that correct?</p> <p>22 A. In these cases the -- the complaint</p> <p>23 from Ms. Phillips --</p> <p>24 Q. It is just a simple question. I</p> <p>25 mean, we don't need a speech. Either yes, I</p>

<p style="text-align: right;">197</p> <p>1 DAVIS, Ph.D. 2 did speak to them first or no, the 3 Affirmative Action people spoke to them 4 first. Just give me a straight answer on 5 that.</p> <p>6 A. I spoke to them first. 7 Q. Got it. 8 And did you memorialize your 9 conversations with any of the people that you 10 spoke to, other than the students, in that 11 February 18th, 2020 memo that you wrote? 12 A. I don't believe so. 13 Q. So, let's talk about the May 16th, 14 2019 incident. Do you remember that? 15 A. I do. 16 Q. All right. 17 Now, this happened right outside 18 your office; is that correct? 19 A. I was not in the office; so I cannot 20 tell you exactly where it happened. 21 Q. Well, where did it -- as far as you 22 know, where did it happen? 23 A. As far as I know, it happened in the 24 outer suite of the dean's office; which is 25 where Ms. Phillips, Mrs. Alsop and Ms. Barton</p>	<p style="text-align: right;">199</p> <p>1 DAVIS, Ph.D. 2 A. But that text message, I would have 3 received that text message long before the 4 filing for this case. 5 Q. Okay. 6 Well, I just asked if you had ever 7 been instructed not to destroy any evidence 8 related to the claims in this case -- 9 A. I -- 10 Q. -- and so -- 11 A. Yes -- 12 Q. -- my question is, Do you recall 13 when you received that instruction? 14 A. I would have received that 15 instruction when I received notification of 16 the filing of the case. 17 Q. All right. 18 And so you are saying you destroyed 19 the text or erased the text before you were 20 told not to destroy any information; is that 21 correct? 22 A. No, I'm not saying either one of 23 those things. 24 First of all, I don't know if I 25 still have the text on my personal device;</p>
<p style="text-align: right;">198</p> <p>1 DAVIS, Ph.D. 2 were located. 3 Q. Got it. 4 Now, how did you learn about this 5 May 16th, 2019 incident? 6 A. I was in a meeting and got a text 7 message calling me back to the office. 8 Q. Who texted you? 9 A. I believe it was Anton who texted 10 me; but I'm not certain of that. 11 Q. Do you still have that text? 12 A. I probably do not. 13 Q. Well this text that you received, 14 was it on your personal device or did you 15 have -- 16 A. It was on my personal device. 17 Q. All right. 18 Were you ever instructed not to 19 destroy, erase or get rid of documents related 20 to this case? 21 A. The lawsuit that we are discussing 22 today? 23 Q. Yeah. 24 A. Yes. 25 Q. Mm-hmm --</p>	<p style="text-align: right;">200</p> <p>1 DAVIS, Ph.D. 2 and secondly, I believe that I would have 3 received the text before I received 4 notification of this case. 5 Q. Got it. 6 So was it often that you had text 7 messages with Anton Baptiste? 8 A. No. 9 Q. And so, do you have your personal 10 device handy now? 11 A. I don't; it's upstairs. 12 Q. Okay. 13 So at the next break, would you be 14 so kind as to look through your device and 15 see if there is a text? 16 A. If I'm advised to do so by my 17 counsel. 18 MR. DRANOFF: Take it under 19 advisement. Next break. 20 MR. SELLS: All right. 21 Q. Now, what do you recall the text 22 saying? 23 A. "Come back to the office as soon as 24 you can. There is an --" I think it said 25 something, you know -- "there's an incident."</p>

<p style="text-align: right;">201</p> <p>1 DAVIS, Ph.D.</p> <p>2 I don't believe that it was specific.</p> <p>3 Q. All right.</p> <p>4 And when do you recall seeing that</p> <p>5 text?</p> <p>6 A. It would have been in -- I believe</p> <p>7 it was probably in the late morning. I don't</p> <p>8 recall exactly.</p> <p>9 Q. Do you recall where you were when</p> <p>10 you saw the text?</p> <p>11 A. I think I was in a dean's meeting up</p> <p>12 on the 9th floor of the -- of the F.I.T.</p> <p>13 building.</p> <p>14 Q. And did you respond to the text?</p> <p>15 A. I believe -- again, I don't recall;</p> <p>16 but I believe I said, "I'm on my way."</p> <p>17 Q. Okay.</p> <p>18 Did you show up at your office</p> <p>19 following that text?</p> <p>20 A. I did.</p> <p>21 Q. When was that?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Was it on May 16 --</p> <p>24 A. Oh, yeah --</p> <p>25 Q. -- 2019 --</p>	<p style="text-align: right;">203</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So, why would you ask them as</p> <p>3 opposed to anything else?</p> <p>4 A. Because they were Tom people in the</p> <p>5 office.</p> <p>6 Q. Did Marilyn Barton text you?</p> <p>7 A. I don't believe so.</p> <p>8 Q. So, you didn't receive any message,</p> <p>9 e-mail, text, phone call from Marilyn Barton</p> <p>10 following this incident?</p> <p>11 A. Again, I don't remember.</p> <p>12 Q. Okay. All right.</p> <p>13 So you come in and you just announce</p> <p>14 out loud "what happened?" to both Umita and</p> <p>15 Marjorie Phillips?</p> <p>16 A. No. I asked both of them, and I</p> <p>17 think -- I'm trying to remember if they</p> <p>18 started talking first or if I started talking</p> <p>19 first. I actually don't remember. But I</p> <p>20 remember that I -- I felt that I needed to</p> <p>21 learn what had happened.</p> <p>22 Q. And why did you feel that way?</p> <p>23 A. Because something clearly had</p> <p>24 happened that had upset Marjorie. Umita, as</p> <p>25 I recall again, was comforting Marjorie at</p>
<p style="text-align: right;">202</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Yes, it was on that day. I'm not</p> <p>3 sure of the hour.</p> <p>4 Q. Okay.</p> <p>5 When you got there, what do you</p> <p>6 recall seeing as you entered the outer space</p> <p>7 to your office?</p> <p>8 A. I recall -- again, to my</p> <p>9 recollection, I recall seeing Marjorie at her</p> <p>10 desk. I recall you Umita being there. I</p> <p>11 recall that Marilyn was not in that part of</p> <p>12 the office, and I don't recall anyone else</p> <p>13 being there.</p> <p>14 Q. Okay.</p> <p>15 So upon entering the office what did</p> <p>16 you do?</p> <p>17 A. I asked what had happened?</p> <p>18 Q. To who?</p> <p>19 A. To both Umita and Marjorie who were</p> <p>20 there.</p> <p>21 Q. So, why did you ask them?</p> <p>22 A. Because they were there.</p> <p>23 Q. But did you have any idea what the</p> <p>24 incident was about?</p> <p>25 A. I don't believe so.</p>	<p style="text-align: right;">204</p> <p>1 DAVIS, Ph.D.</p> <p>2 that point. Marilyn was not in her usual</p> <p>3 work place.</p> <p>4 Q. Isn't it a fact you and Marilyn</p> <p>5 Barton walked into your office together?</p> <p>6 A. I don't remember.</p> <p>7 Q. And then you met privately with</p> <p>8 Marilyn before you spoke to Ms. Phillips and</p> <p>9 anyone else; isn't that right?</p> <p>10 A. I don't remember.</p> <p>11 Q. Do you remember speaking with</p> <p>12 Ms. Barton in your office following this</p> <p>13 incident?</p> <p>14 A. I do.</p> <p>15 Q. Tell me what the conversation was</p> <p>16 about?</p> <p>17 A. The conversation was about finding</p> <p>18 out what had happened.</p> <p>19 Q. Okay.</p> <p>20 What did you say and what did she</p> <p>21 say?</p> <p>22 A. I'm not gonna be able to recall</p> <p>23 word-for-word a conversation that happened</p> <p>24 that long ago. The import of the</p> <p>25 conversation was that there had been an</p>

<p style="text-align: right;">205</p> <p>1 DAVIS, Ph.D. 2 incident with the student who had come 3 looking — who had been unable for whatever 4 reason to get a cap and gown regalia for the 5 graduation which was coming up and there had 6 been -- the student had come looking for it 7 and she had been sent back to the book store, 8 which is where caps and gowns are given out.</p> <p>9 Because the student had not ordered 10 one in advance, as I recall, she was sent 11 back to the School of Graduate Studies. We 12 kept a supply of caps and gowns in the school 13 because this happened every year. Some 14 student would forget and so we had extras on 15 hand. I was told that Marilyn made the 16 decision to give the student regalia and that 17 there was a back and forth between 18 Ms. Phillips and Ms. Barton about this, and 19 as we heard yesterday that this escalated 20 rapidly.</p> <p>21 But as to what Marilyn Barton told 22 me, those are the -- the -- those are -- she 23 related those facts to me.</p> <p>24 Q. Okay.</p> <p>25 Well you said it "escalated</p>	<p style="text-align: right;">207</p> <p>1 DAVIS, Ph.D. 2 this regalia and giving it off to the 3 student, Ms. Phillips was objecting to that 4 and apparently there was some back and forth 5 between them over that and Ms. Barton lost 6 it.</p> <p>7 Q. And so, Marilyn Barton told you that 8 she -- did she say that she was yelling?</p> <p>9 A. I believe she did.</p> <p>10 Q. And she told you that she told 11 Ms. Phillips that she would "fucking kill 12 her"; is that right?</p> <p>13 A. I believe she did.</p> <p>14 Q. And did she say that she told 15 Ms. Phillips that she would fuck her up?</p> <p>16 A. I'm not sure how many of the -- how 17 much of the language that we now know she 18 related to me in that moment after the 19 incident.</p> <p>20 Q. All right.</p> <p>21 But you don't recall what it is that 22 she said specifically about why she snapped; 23 is that right?</p> <p>24 A. I think she just said I -- it's been --</p> <p>25 this is been building for a long time. I</p>
<p style="text-align: right;">206</p> <p>1 DAVIS, Ph.D. 2 rapidly." Escalated by who?</p> <p>3 A. By Marilyn.</p> <p>4 Q. So, what did Marilyn Barton say to 5 you about how she escalated this rapidly?</p> <p>6 A. She was remorseful. She said that 7 she had become very -- I don't remember, 8 again, the exact words that she uses -- that 9 she used. But that she had become angry and 10 had yelled at Ms. Phillips. She told me, I 11 believe, that she had used the words "I will 12 fucking kill you." With -- she had addressed 13 those words to Ms. Phillips.</p> <p>14 And again, Marilyn was quite upset 15 about all of this and just sort of -- yeah, 16 the -- the other part of this that she told 17 me was that she just snapped and that she -- 18 she didn't know why, but she just snapped.</p> <p>19 Q. You said "she didn't know why"?</p> <p>20 A. She -- again, I don't recall exactly 21 what she said to me; but the import of it was 22 that she had become so frustrated with 23 Ms. Phillips over time that she just snapped 24 over this; because she felt like she was 25 making -- Marilyn was making a decision about</p>	<p style="text-align: right;">208</p> <p>1 DAVIS, Ph.D. 2 don't recall specifically, no.</p> <p>3 Q. So, what did you say to Ms. Barton 4 after she told that to you?</p> <p>5 A. I recall telling her to go compose 6 herself. I also spoke with Ms. Phillips --</p> <p>7 Q. Well, no. No. No. No. No. No, I 8 want you to tell me everything you said to 9 Ms. Barton.</p> <p>10 A. All right. I'm trying to recall 11 everything that I said to her. I might have 12 told her -- I recall telling her to compose 13 herself. I'm not sure I recall any other 14 specific things that I said to her.</p> <p>15 Q. So, you didn't ask her any 16 questions?</p> <p>17 A. I don't recall whether what I 18 learned was as a result of asking questions 19 or she just told me.</p> <p>20 Q. So, how was it that you and 21 Ms. Barton met to go into your office?</p> <p>22 A. As I said, I didn't recall that we 23 went into my office together; so I don't 24 recall how we would have met to do that.</p> <p>25 Q. All right.</p>

<p style="text-align: right;">209</p> <p>1 DAVIS, Ph.D.</p> <p>2 And so, now when you hear that</p> <p>3 Ms. Barton had --- in her own words --- snapped</p> <p>4 and threatened to kill Ms. Phillips, what did</p> <p>5 you do next?</p> <p>6 A. I'm not sure that I will remember</p> <p>7 the sequence of events exactly as they</p> <p>8 happened. I definitely spoke with Marjorie</p> <p>9 to make sure that she was okay. I remember</p> <p>10 that she was very composed and very calm, and</p> <p>11 I remarked that and said something like,</p> <p>12 "Given what I have just heard, I'm surprised</p> <p>13 that you are this calm." And she was upset</p> <p>14 but very, very composed.</p> <p>15 I asked her what she wanted to do, I</p> <p>16 would think. I called security, I believe.</p> <p>17 Q. When you asked Ms. Phillips what she</p> <p>18 wanted to do, why did you do that?</p> <p>19 A. Because I was concerned for her</p> <p>20 well-being.</p> <p>21 Q. But at this point in time, you knew</p> <p>22 that there was an open investigation about</p> <p>23 whether you had discriminated against</p> <p>24 Ms. Phillips, right?</p> <p>25 A. Oh, it never -- those two things</p>	<p style="text-align: right;">211</p> <p>1 DAVIS, Ph.D.</p> <p>2 10-minute break now, Derek?</p> <p>3 MR. SELLS: Yes. Yes, sorry.</p> <p>4 MR. MENKEN: I'll be back 4:10.</p> <p>5 MR. SELLS: Why don't you just</p> <p>6 tell us when you are ready to come</p> <p>7 back on?</p> <p>8 MR. MENKEN: I'll do that.</p> <p>9 Thank you.</p> <p>10 (Whereupon, a brief recess was</p> <p>11 taken at 4:00 p.m.; after which, the</p> <p>12 proceedings continued at 4:10 p.m. as</p> <p>13 follows.)</p> <p>14 MR. DRANOFF: Derek, just so</p> <p>15 you know, during the break we did</p> <p>16 have Ms. Davis check her phone and</p> <p>17 there was no text message.</p> <p>18 MR. SELL: Got it.</p> <p>19 Q. Do you have text messages with</p> <p>20 Marilyn Barton?</p> <p>21 A. I do.</p> <p>22 Q. All right.</p> <p>23 And have you shown these text</p> <p>24 messages to anyone?</p> <p>25 A. I have not.</p>
<p style="text-align: right;">210</p> <p>1 DAVIS, Ph.D.</p> <p>2 never collided in my thinking when this was</p> <p>3 happening.</p> <p>4 This was very in the moment of</p> <p>5 taking care of a very charged situation that</p> <p>6 I wanted to make sure -- where I wanted to</p> <p>7 make sure that the employees were safe and</p> <p>8 that there was no further escalation of</p> <p>9 anything. I was --</p> <p>10 Q. So, do you have training in that?</p> <p>11 Do you have training on making employees feel</p> <p>12 safe after they get threats, after they get</p> <p>13 death threats? Do you have training in that?</p> <p>14 A. I am not speaking in an official</p> <p>15 capacity that would require training. I'm</p> <p>16 speaking in a human capacity of compassion</p> <p>17 and empathy.</p> <p>18 So, I was not the last person to be</p> <p>19 involved in this. I notified Human</p> <p>20 Resources --</p> <p>21 Q. How did you do that?</p> <p>22 A. I believe I called to Natacha Unelus</p> <p>23 the generalist; but again, I cannot be -- I</p> <p>24 cannot be certain about any of these details.</p> <p>25 MR. MENKEN: Can we take that</p>	<p style="text-align: right;">212</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So, you have not shared these text</p> <p>3 messages with your attorney or anyone at</p> <p>4 F.I.T.; is that right?</p> <p>5 A. The text messages that I'm referring</p> <p>6 to are texts about meetings being</p> <p>7 rescheduled, logistics. I don't believe that</p> <p>8 there is anything substantive in those</p> <p>9 e-mails -- text messages. I have not</p> <p>10 reviewed them. I just took a brief look at</p> <p>11 them during the break.</p> <p>12 Q. So, do you have any text messages</p> <p>13 regarding the date May 16th, 2019 from</p> <p>14 Marilyn Barton?</p> <p>15 A. I did not see any when I reviewed my</p> <p>16 messages just now.</p> <p>17 Q. Did you look specifically for that?</p> <p>18 A. I did not.</p> <p>19 Q. So, this text message that you</p> <p>20 remember seeing, you don't know who it was</p> <p>21 from?</p> <p>22 A. I now wonder if I just misremembered</p> <p>23 the entire thing and did not receive a text</p> <p>24 message. I really believe it was Anton, but</p> <p>25 I do not recall.</p>

<p>213</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Got it.</p> <p>3 Anyway we were talking about your</p> <p>4 meeting with Ms. Phillips following this May</p> <p>5 16th, 2019 meeting and you asked her what did</p> <p>6 she want you; is that right? Or what did you</p> <p>7 to do you asked her, right?</p> <p>8 A. I don't recall what I asked her.</p> <p>9 Q. Okay.</p> <p>10 But your concern at that point</p> <p>11 was for everyone's safety; is that right?</p> <p>12 A. I was concerned for everyone's</p> <p>13 safety. I was concerned for Ms. Phillips'</p> <p>14 having heard about what had happened.</p> <p>15 Q. You said that you called security;</p> <p>16 is that right?</p> <p>17 A. I recall that I called Human</p> <p>18 Resources, and I'm not sure if I called</p> <p>19 security directly or if they called security.</p> <p>20 Q. Why did you call Human Resources?</p> <p>21 A. To let them know -- I called --</p> <p>22 again, I'm remembering this and I don't</p> <p>23 believe that I have any notes or anything</p> <p>24 about it. But I believe that I called our</p> <p>25 generalist in Human Resources to say that we</p>	<p>215</p> <p>1 DAVIS, Ph.D.</p> <p>2 told to Ms. Phillips, right?</p> <p>3 A. She did.</p> <p>4 Q. So my question is, You certainly</p> <p>5 know Ms. Phillips is African-American,</p> <p>6 correct?</p> <p>7 A. I do.</p> <p>8 Q. And you just decided on your own</p> <p>9 that this incident was not an act of</p> <p>10 discrimination, right?</p> <p>11 A. In the moment of the incident, my</p> <p>12 concern was for everyone's safety and</p> <p>13 security.</p> <p>14 Q. That is not my question.</p> <p>15 A. I know.</p> <p>16 Q. So if your concern was just about</p> <p>17 everyone's safety and security, then why</p> <p>18 would you choose HR to make the call to as</p> <p>19 opposed to the Affirmative Action Office?</p> <p>20 A. Because, again, I did not perceive --</p> <p>21 based on the description given to me -- that</p> <p>22 what had happened was the result of discrim-</p> <p>23 -- discrimination -- just -- discriminatory</p> <p>24 harassment or retaliation.</p> <p>25 Q. Well, does the policy say</p>
<p>214</p> <p>1 DAVIS, Ph.D.</p> <p>2 had had a serious incident in the School of</p> <p>3 Graduate Study office?</p> <p>4 Q. Okay.</p> <p>5 And what was the point of calling</p> <p>6 the HR generalist?</p> <p>7 A. The Human Resources generalist was</p> <p>8 responsible for issues -- work place issues</p> <p>9 in our office and was my point person for</p> <p>10 those things.</p> <p>11 Q. Okay.</p> <p>12 Well, why didn't you call the</p> <p>13 Affirmative Action Office?</p> <p>14 A. I did not call the Affirmative</p> <p>15 Action Office because I did not believe this</p> <p>16 was an incident related to discrimination,</p> <p>17 discriminatory harassment or retaliation per</p> <p>18 the policy.</p> <p>19 Q. Had you ever seen Marilyn Barton</p> <p>20 threaten to kill a Caucasian person?</p> <p>21 A. I had never seen Marilyn Barton</p> <p>22 threaten to kill anyone. I did not see</p> <p>23 Marilyn Barton threaten to kill Ms. Phillips.</p> <p>24 Q. Okay.</p> <p>25 Well, she told you that's what she</p>	<p>216</p> <p>1 DAVIS, Ph.D.</p> <p>2 discriminatory harassment?</p> <p>3 A. I believe it does. I don't recall --</p> <p>4 Q. You believe it does? Okay.</p> <p>5 A. We can look at it again.</p> <p>6 Q. No, we can't.</p> <p>7 So you just assume that it wasn't</p> <p>8 discriminatory harassment as opposed to just</p> <p>9 harassment, right?</p> <p>10 A. I did not believe that what had</p> <p>11 happened, based on what was described to me</p> <p>12 about the incident, was related to</p> <p>13 discrimination or retaliation?</p> <p>14 Q. What's retaliation?</p> <p>15 A. Retaliation is defined in the</p> <p>16 policy. I'm not comfortable summarizing what</p> <p>17 the policy says about.</p> <p>18 Q. No, I just want to know what your</p> <p>19 understanding is about retaliation.</p> <p>20 A. I have multiple understandings of</p> <p>21 retaliation depending upon the context.</p> <p>22 Q. Okay.</p> <p>23 So tell me what they are?</p> <p>24 A. I would have to know what the</p> <p>25 context would be in order to give you a</p>

<p>217</p> <p>1 DAVIS, Ph.D.</p> <p>2 definition of retaliation.</p> <p>3 Q. Well, we're talking about the</p> <p>4 antiharassment policy at F.I.T., aren't we?</p> <p>5 A. If we are talking about the</p> <p>6 antiharassment policy I would not be</p> <p>7 comfortable at this point talking about it</p> <p>8 without seeing the language in the policy.</p> <p>9 Q. Why?</p> <p>10 A. Because I have not been at F.I.T.,</p> <p>11 as I have said, now since February of 2020.</p> <p>12 My memory of the details of that policy, it's</p> <p>13 not -- my memory is not comprehensive, and I</p> <p>14 would not feel comfortable summarizing or</p> <p>15 paraphrasing what is in the policy.</p> <p>16 Q. Okay.</p> <p>17 So, did you pull out the policy</p> <p>18 before you made the call to HR to see if the</p> <p>19 definition of retaliation fit with the</p> <p>20 description of what occurred on --</p> <p>21 A. As I have said --</p> <p>22 Q. -- on May 16th, 2019?</p> <p>23 A. As I said in the immediate moment of</p> <p>24 that incident, my concern was with</p> <p>25 understanding --</p>	<p>219</p> <p>1 DAVIS, Ph.D.</p> <p>2 February of 2020, and I do not recall the</p> <p>3 provisions of the policy.</p> <p>4 Q. Okay.</p> <p>5 So, you made a decision without</p> <p>6 looking at the policy that it wasn't</p> <p>7 something that you should report to the</p> <p>8 Affirmative Action Office, correct?</p> <p>9 A. In the moment, correct.</p> <p>10 Q. But you also knew that the</p> <p>11 Affirmative Action Office was investigating</p> <p>12 you on May 16th, 2019, correct?</p> <p>13 A. I am not sure when I -- I -- as I</p> <p>14 said, I believe I gave my statement late in</p> <p>15 May. I am not sure when I knew that the</p> <p>16 Affirmative Action Office was investigating</p> <p>17 me. And I'm not sure that I knew that they</p> <p>18 weren't investigating me on matters that</p> <p>19 extended beyond the 3/5th's rule issue.</p> <p>20 Q. Okay.</p> <p>21 Well, your answer before was that</p> <p>22 you were interviewed about the incidents in</p> <p>23 May of 2018. This is a year later, right?</p> <p>24 This is May of 2019, right?</p> <p>25 A. Yes. Again, I --</p>
<p>218</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Listen. Look -- Dean -- look --</p> <p>3 A. Excuse me.</p> <p>4 Q. Dr. Davis, I simply asked you, Did</p> <p>5 you look at the policy before you called HR?</p> <p>6 That's all I asked you.</p> <p>7 A. No.</p> <p>8 Q. It's either yes or no. You said you</p> <p>9 didn't?</p> <p>10 A. No.</p> <p>11 Q. But in order to answer the question</p> <p>12 now about whether the conduct that was</p> <p>13 described to you by Marilyn Barton fit into</p> <p>14 the definition of retaliation, you would need</p> <p>15 to look at the policy?</p> <p>16 A. That's correct.</p> <p>17 Q. But you didn't do it then, but you</p> <p>18 need to do it now that you have been sued,</p> <p>19 right?</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form.</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. The reason I would need to do it now</p> <p>25 is because I have not been at F.I.T. since</p>	<p>220</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So you knew that the Affirmative</p> <p>3 Action Office had an open investigation into</p> <p>4 your conduct as well as Marilyn Barton's</p> <p>5 conduct because of complaints that</p> <p>6 Ms. Phillips had raised to them, right?</p> <p>7 A. I knew that there was a complaint</p> <p>8 that related to me to which I was responding.</p> <p>9 Q. And so, you chose not to go to the</p> <p>10 Affirmative Action Office to report Marilyn</p> <p>11 Barton's conduct as potentially being</p> <p>12 retaliatory, right?</p> <p>13 A. I'm not sure what your question is.</p> <p>14 Q. Do you want it read again?</p> <p>15 A. No, I thought you were in the middle</p> <p>16 of a question there.</p> <p>17 Q. No. You chose not to report</p> <p>18 Ms. Barton's conduct to the Affirmative</p> <p>19 Action Office as possibly being retaliatory,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. But you know that retaliation is</p> <p>23 when an adverse action is taken against an</p> <p>24 employee who makes a complaint of</p> <p>25 discrimination, harassment or some other</p>

<p style="text-align: right;">221</p> <p>1 DAVIS, Ph.D.</p> <p>2 protected category, right?</p> <p>3 A. Yes, I'm aware of the policy.</p> <p>4 Q. Got it.</p> <p>5 And so, you knew that Ms. Barton's</p> <p>6 conduct towards Ms. Phillips and threatening</p> <p>7 to kill her and cursing at her and disturbing</p> <p>8 her ability to do her job was an adverse</p> <p>9 employment action; you knew that, right?</p> <p>10 A. I did -- I'm sorry. Could you</p> <p>11 repeat the question? I lost track in the</p> <p>12 middle.</p> <p>13 (Whereupon, the requested</p> <p>14 portion of the transcript was read</p> <p>15 back.)</p> <p>16 MR. MELITO: Objection to form.</p> <p>17 MR. DRANOFF: Object to the</p> <p>18 form.</p> <p>19 A. I'm not sure in the moment that I</p> <p>20 would have characterized it in that way as an</p> <p>21 "adverse employment action."</p> <p>22 Q. You don't think that was an adverse</p> <p>23 employment action?</p> <p>24 A. I've said that in the moment — in</p> <p>25 that moment of that event, I'm not sure I</p>	<p style="text-align: right;">223</p> <p>1 DAVIS, Ph.D.</p> <p>2 because she did something outside of her job</p> <p>3 description?</p> <p>4 A. I'm not sure I follow your question.</p> <p>5 Q. Sure.</p> <p>6 Marilyn Barton was subject to a</p> <p>7 complaint of discrimination by Ms. Phillips,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you were the subject of a</p> <p>11 complaint by Ms. Phillips, right?</p> <p>12 A. Correct.</p> <p>13 Q. And you were the one who put in a</p> <p>14 request and recommendation that Ms. Barton be</p> <p>15 given reclassification of her job and a</p> <p>16 raise, right?</p> <p>17 A. I put in that request in 2017. And</p> <p>18 again, it was not within my duties and</p> <p>19 responsibilities or power to request a raise.</p> <p>20 Q. Got it.</p> <p>21 But you could have withdrawn that</p> <p>22 request, right?</p> <p>23 A. No, that committee -- that request</p> <p>24 goes out of my hands when it goes into the</p> <p>25 committees that do the reassignment and the</p>
<p style="text-align: right;">222</p> <p>1 DAVIS, Ph.D.</p> <p>2 would have categorized it in that way.</p> <p>3 Q. Well, how would you characterize it?</p> <p>4 A. I characterized it as -- well, first</p> <p>5 of all, I characterized it as highly</p> <p>6 unfortunate; but also as a possible assault.</p> <p>7 Q. "As a possible assault"; is that</p> <p>8 what you said?</p> <p>9 A. Yes, base --</p> <p>10 Q. So --</p> <p>11 A. On --</p> <p>12 Q. -- so an assault is not an adverse</p> <p>13 employment action? When one employee has a</p> <p>14 complaint lodged against them by another</p> <p>15 employee assaults the employee who makes the</p> <p>16 complaint, but you can't characterize that as</p> <p>17 an adverse action; is that correct?</p> <p>18 A. No, that is not correct.</p> <p>19 Q. Okay.</p> <p>20 Well, certainly assaulting</p> <p>21 Ms. Phillips was not part of Marilyn Barton's</p> <p>22 job description, right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay.</p> <p>25 So, did you try and reclassify her</p>	<p style="text-align: right;">224</p> <p>1 DAVIS, Ph.D.</p> <p>2 evaluation of the requests and.</p> <p>3 Q. Got it.</p> <p>4 You could have had Ms. Barton fired</p> <p>5 for her conduct, right?</p> <p>6 A. That is not true. I had no --</p> <p>7 Q. Oh --</p> <p>8 A. -- I have no power or had no power</p> <p>9 in my position.</p> <p>10 Q. So you can't make a recommendation</p> <p>11 that an employee who you supervise could be</p> <p>12 fired; you don't have the power to do that?</p> <p>13 A. Ms. Barton is a member of the</p> <p>14 collective bargaining unit and those matters</p> <p>15 are handled between that unit and Human</p> <p>16 Resources.</p> <p>17 Q. So let me understand, you as a</p> <p>18 supervisor have the ability to recommend and</p> <p>19 request a reconsideration through the union</p> <p>20 for one of your supervisees to get a raise</p> <p>21 and a reclassification; you could do that,</p> <p>22 right?</p> <p>23 A. No.</p> <p>24 Q. -- as you described --</p> <p>25 MR. DRANOFF: Just note my</p>

<p style="text-align: right;">225</p> <p>1 DAVIS, Ph.D.</p> <p>2 objection to form.</p> <p>3 A. No, I can request, as I did for</p> <p>4 Ms. Barton, a re-evaluation. But the</p> <p>5 decisions about --</p> <p>6 Q. I'm not asking about a decision.</p> <p>7 I'm asking about a request --</p> <p>8 A. I can make --</p> <p>9 Q. Just listen to my question.</p> <p>10 You could request that an employee</p> <p>11 of yours, someone that you supervised, get a</p> <p>12 reclassification and a raise; you could</p> <p>13 request that, right?</p> <p>14 A. No.</p> <p>15 MR. DRANOFF: Object to the</p> <p>16 form.</p> <p>17 Q. You can't request it? I thought you</p> <p>18 did?</p> <p>19 A. I can request a re-evaluation or a</p> <p>20 reclassification. I cannot request any</p> <p>21 adjustment to salary.</p> <p>22 Q. Well, that's what the</p> <p>23 reclassification does, right? Because if</p> <p>24 someone gets reclassified under the</p> <p>25 collective bargaining agreement, if they get</p>	<p style="text-align: right;">227</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. I'm not asking about that.</p> <p>3 A. I know, but I --</p> <p>4 Q. So, you just want to answer your own</p> <p>5 questions since you know that my question did</p> <p>6 not ask you when you submitted the paperwork.</p> <p>7 It asked you specifically when the raise and</p> <p>8 reclassification came through, you chose to</p> <p>9 answer by saying, "I submitted the paperwork</p> <p>10 in 2017."</p> <p>11 A. I --</p> <p>12 Q. I mean, look. Look.</p> <p>13 A. I was going to finish --</p> <p>14 Q. Dr. Davis. Dr. Davis, I'll raw the</p> <p>15 question.</p> <p>16 Dr. Davis, do you understand what</p> <p>17 you are doing today the way that you are</p> <p>18 answering these questions; do you understand</p> <p>19 what you are doing?</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form.</p> <p>22 There is no reason to ask that</p> <p>23 question. Ask about facts in this</p> <p>24 case.</p> <p>25 MR. SELLS: No, I'm just</p>
<p style="text-align: right;">226</p> <p>1 DAVIS, Ph.D.</p> <p>2 reclassified to a different position, then</p> <p>3 that different position would have different</p> <p>4 pay; isn't that right?</p> <p>5 MR. DRANOFF: Object to the</p> <p>6 form. Objection. That's inaccurate.</p> <p>7 A. It's inaccurate, and it --</p> <p>8 Q. Oh, it's not -- it's not accurate.</p> <p>9 Well, tell me how it's inaccurate?</p> <p>10 A. It is not accurate in that you could</p> <p>11 be reclassified into a position that had the</p> <p>12 same pay scale but that was in a different</p> <p>13 unit, that had a different job title; it</p> <p>14 doesn't necessarily invoke a pay raise. It</p> <p>15 can invoke --</p> <p>16 Q. What did it do with Ms. Barton?</p> <p>17 A. The committee ultimately</p> <p>18 reclassified her to a higher level, and I</p> <p>19 believe there was a pay increase that</p> <p>20 accompanied that reassignment.</p> <p>21 Q. Right.</p> <p>22 And this happened after Ms. Barton</p> <p>23 threatened to kill Ms. Phillips?</p> <p>24 A. The paperwork that I submitted was</p> <p>25 submitted in 2017.</p>	<p style="text-align: right;">228</p> <p>1 DAVIS, Ph.D.</p> <p>2 asking.</p> <p>3 Q. Whether you are doing it</p> <p>4 intentionally?</p> <p>5 MR. DRANOFF: That is not --</p> <p>6 Q. When I ask you a question</p> <p>7 specifically about when the raise and the</p> <p>8 reclassification came through as being after</p> <p>9 the incident with Ms. Phillips and Ms. Barton</p> <p>10 and you chose to say, "I put the paperwork in</p> <p>11 in 2017."</p> <p>12 So I am asking you, are you doing</p> <p>13 this purposefully so as to try and deflect</p> <p>14 liability for your conduct in this case or is</p> <p>15 there some reason why you are not answering</p> <p>16 the questions that are being asked of you?</p> <p>17 MR. DRANOFF: Object to the</p> <p>18 form.</p> <p>19 Ask your question, Derek, and</p> <p>20 she will answer your question.</p> <p>21 MR. SELLS: I just asked a</p> <p>22 question.</p> <p>23 MR. DRANOFF: That is not an</p> <p>24 appropriate question. It has nothing</p> <p>25 to do with the case.</p>

<p style="text-align: right;">229</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. SELLS: It has everything</p> <p>3 to do with the case.</p> <p>4 Q. It has everything to do with the way</p> <p>5 you're answering questions today, and that's</p> <p>6 why I'm trying to find out --</p> <p>7 MR. DRANOFF: Note a harassment</p> <p>8 objection.</p> <p>9 MR. SELLS: Okay.</p> <p>10 Q. You can answer the question.</p> <p>11 A. I will happily answer the question.</p> <p>12 I was halfway through answering the question</p> <p>13 when I was interrupted.</p> <p>14 So the second part of my answer is,</p> <p>15 I do not recall exactly when Marilyn Barton's</p> <p>16 upgrade came through.</p> <p>17 Q. Got it.</p> <p>18 But you didn't seek to change</p> <p>19 anything having to do with Marilyn Barton's</p> <p>20 job following her threats to kill</p> <p>21 Ms. Phillips, right?</p> <p>22 A. I did not.</p> <p>23 Q. Okay.</p> <p>24 You didn't ask that she be moved out</p> <p>25 of the office that was right outside of your</p>	<p style="text-align: right;">231</p> <p>1 DAVIS, Ph.D.</p> <p>2 May 16th, 2019 incident, right?</p> <p>3 A. I would not characterize what I did</p> <p>4 as an investigation.</p> <p>5 Q. Okay.</p> <p>6 Well, you collected statements, did</p> <p>7 you not?</p> <p>8 A. I didn't -- I was asked by Human</p> <p>9 Resources to obtain statements from people</p> <p>10 who had been a witness -- people who had</p> <p>11 witnessed the events.</p> <p>12 Q. You were asked by Human Resources;</p> <p>13 who asked you to do it?</p> <p>14 A. I believe that Natacha Unelus asked</p> <p>15 me to do it, and I simply asked the people</p> <p>16 who had been witnesses to the event to</p> <p>17 provide me with a witness statement and</p> <p>18 collected those statements and forwarded them</p> <p>19 onto Human Resources.</p> <p>20 MR. SELLS: Can we put up</p> <p>21 Exhibit 36, please.</p> <p>22 (The image is shared on the</p> <p>23 computer screen.)</p> <p>24 MR. SELLS: For the record,</p> <p>25 this was shown yesterday. It is a</p>
<p style="text-align: right;">230</p> <p>1 DAVIS, Ph.D.</p> <p>2 office, correct?</p> <p>3 A. I did not.</p> <p>4 Q. And even though you talked about</p> <p>5 trying to make sure everyone was safe, you</p> <p>6 took no steps to determine whether or not</p> <p>7 Marilyn Barton was homicidal, right?</p> <p>8 A. That was outside the scope of my job</p> <p>9 or my expertise.</p> <p>10 Q. And you did not report Marilyn</p> <p>11 Barton's conduct as being retaliatory to the</p> <p>12 Affirmative Action Office, correct?</p> <p>13 A. Correct.</p> <p>14 Q. But you willingly allowed</p> <p>15 Ms. Phillips to be moved out of that office</p> <p>16 space, right?</p> <p>17 A. Ms. Phillips requested a move.</p> <p>18 Q. And you willingly allowed it,</p> <p>19 correct?</p> <p>20 A. I worked with Human Resources to</p> <p>21 evaluate the best option for relocation --</p> <p>22 Q. Got it --</p> <p>23 A. Yes.</p> <p>24 Q. And the other thing that you did was</p> <p>25 you did the initial investigation into this</p>	<p style="text-align: right;">232</p> <p>1 DAVIS, Ph.D.</p> <p>2 document that copies an e-mail</p> <p>3 thread, so if we could start from --</p> <p>4 this is a two-page document, F.I.T.</p> <p>5 237 and 238.</p> <p>6 Q. The thread first starts with Isolina</p> <p>7 Perez who talks about needing to meet, not</p> <p>8 with you, but with Eric and Cynthia.</p> <p>9 Do you know who they are?</p> <p>10 A. I do.</p> <p>11 Q. Who are they?</p> <p>12 A. Eric Oden and Cynthia Glass.</p> <p>13 Q. Okay.</p> <p>14 Now, one of the things that she says</p> <p>15 in her e-mail to them is that she reached out</p> <p>16 to you and -- and this is on May 20th, 2019 --</p> <p>17 that she had reached out to you and you said</p> <p>18 that you need to find out the protocol before</p> <p>19 discussing the incident.</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form.</p> <p>22 Q. Now, do you remember having that</p> <p>23 conversation with Ms. Perez?</p> <p>24 A. I do not.</p> <p>25 Q. Do you have any reason to believe</p>

<p style="text-align: right;">233</p> <p>1 DAVIS, Ph.D.</p> <p>2 that she is lying about this statement?</p> <p>3 A. I do not.</p> <p>4 Q. Why would you tell Isolina Perez</p> <p>5 that you need to find out the protocol before</p> <p>6 you could discuss the incident?</p> <p>7 A. I don't know what I meant by</p> <p>8 "protocol" or what Isolina is referring to</p> <p>9 when she characterizes what I say as to</p> <p>10 "protocol." I don't know that -- what that</p> <p>11 precisely refers to.</p> <p>12 Q. All right.</p> <p>13 But as of May 20th of 2019, one of</p> <p>14 the things that Ms. Perez indicates os that</p> <p>15 Ms. Phillips didn't feel safe in the same</p> <p>16 office with Ms. Barton; is that right?</p> <p>17 A. I see it there, yes.</p> <p>18 Q. Okay.</p> <p>19 And so she, Isolina Perez, had to</p> <p>20 reach out to Mario Cabrera to ask for a</p> <p>21 security escort for Ms. Phillips; do you see</p> <p>22 that?</p> <p>23 A. I do.</p> <p>24 Q. So, you didn't reach out to security</p> <p>25 to get an escort for Ms. Phillips, did you?</p>	<p style="text-align: right;">235</p> <p>1 DAVIS, Ph.D.</p> <p>2 is limited to HR.</p> <p>3 Q. Then you see that Cynthia Glass</p> <p>4 writes, "Sorry. Forgot to CC you Mary."</p> <p>5 And so she sends this to you, right?</p> <p>6 A. I can't tell without scrolling up to</p> <p>7 see if that happened --</p> <p>8 Q. Well, we'll get to that. Right?</p> <p>9 But she wouldn't write, "Sorry. Forgot to CC</p> <p>10 you, Mary" unless she was sending it to you,</p> <p>11 correct? She's not gonna write that for</p> <p>12 herself, is she?</p> <p>13 A. I would assume so.</p> <p>14 Q. All right. So let's scroll up.</p> <p>15 And you now have the underlying</p> <p>16 thread, you can read it, and then you respond</p> <p>17 back to Cynthia and you put Natacha on the</p> <p>18 e-mail thread, right?</p> <p>19 A. That's correct.</p> <p>20 Q. You say, "Hi, Cynthia. Thanks very</p> <p>21 much. FYI, I left an voice mail with Isolina</p> <p>22 this afternoon around 1:00 p.m. letting her</p> <p>23 know that I was gathering information and</p> <p>24 would like to wait until that process was</p> <p>25 complete before meeting."</p>
<p style="text-align: right;">234</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't know that those two things</p> <p>3 are mutually exclusive; but I do not recall.</p> <p>4 Q. Okay.</p> <p>5 So let's scroll up a little bit</p> <p>6 more. Then there is an e-mail from Cynthia</p> <p>7 Glass. What Cynthia Glass writes to Isolina</p> <p>8 is, "Hello, Isolina. We are currently</p> <p>9 investigating the incident, and I expect to</p> <p>10 have a report from Campus Safety in the a.m.</p> <p>11 Until an assessment that there is no</p> <p>12 imminent danger or other safety concerns, she</p> <p>13 may elect to remain home until we discuss and</p> <p>14 determine what may be necessary to resolve</p> <p>15 this issue."</p> <p>16 All right. So you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And so what Cynthia Glass is saying</p> <p>19 is that we -- and you were not part of HR,</p> <p>20 right?</p> <p>21 A. No.</p> <p>22 Q. So the we that she is talking about</p> <p>23 does not include you, does it?</p> <p>24 A. I can't be sure of that. It doesn't</p> <p>25 say specifically that this is related -- this</p>	<p style="text-align: right;">236</p> <p>1 DAVIS, Ph.D.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Cynthia didn't ask you to gather</p> <p>5 information; you did that on your own, right?</p> <p>6 A. No, that is not true.</p> <p>7 Q. So, when did she ask you to</p> <p>8 investigate?</p> <p>9 A. First of all, no one asked me to</p> <p>10 investigate; but my recollection is that</p> <p>11 Natacha Unelus as the HR generalist assigned</p> <p>12 to the Graduate School asked me to gather</p> <p>13 statements from the people who witnessed the</p> <p>14 incident or were involved in the incident;</p> <p>15 and I was doing that.</p> <p>16 Q. Did --</p> <p>17 A. Nothing more than collecting</p> <p>18 statements from the people who had witnessed</p> <p>19 or been involved in the incident.</p> <p>20 MR. SELLS: Okay. Let's pull</p> <p>21 this down.</p> <p>22 Q. Where in the F.I.T. policies does it</p> <p>23 say that where an employee has an open</p> <p>24 complaint that's being investigated by</p> <p>25 another employee and then faces a situation</p>

<p>237</p> <p>1 DAVIS, Ph.D.</p> <p>2 where a possible retaliation matter happens</p> <p>3 that the employee who has an open</p> <p>4 investigation and complaint should lead the</p> <p>5 investigation into the next possible</p> <p>6 complaint? Where does it say that in</p> <p>7 F.I.T.'s policies?</p> <p>8 MR. DRANOFF: Object to the</p> <p>9 form.</p> <p>10 A. I don't know that that's covered</p> <p>11 anywhere in F.I.T.'s policy.</p> <p>12 Q. Got it.</p> <p>13 But you know what a "conflict of</p> <p>14 interest" is, don't you?</p> <p>15 A. I believe I do.</p> <p>16 Q. Okay.</p> <p>17 What is a "conflict of interest"?</p> <p>18 A. A conflict of -- I'm not going to</p> <p>19 define "conflict of interest" because, again,</p> <p>20 that could be a very situational definition.</p> <p>21 Q. Okay.</p> <p>22 You already said that you made a</p> <p>23 determination that the incident between</p> <p>24 Ms. Barton and Ms. Phillips was not</p> <p>25 retaliation such that you have to report it</p>	<p>239</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't recall.</p> <p>3 MR. SELLS: Could we pull up</p> <p>4 Exhibit 20.</p> <p>5 Q. Is this a statement you got from</p> <p>6 Marilyn Barton?</p> <p>7 A. I believe it is.</p> <p>8 MR. SELLS: Just for the</p> <p>9 record, this is Marilyn Barton's</p> <p>10 statement on May 16th, 2019 that's</p> <p>11 been previously marked.</p> <p>12 (The image is shared on the</p> <p>13 computer screen.)</p> <p>14 Q. Now, did you read Ms. Barton's</p> <p>15 statement before you submitted it anywhere?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did you help her prepare this</p> <p>18 statement?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Well, how did you get it from her;</p> <p>21 what did you tell her?</p> <p>22 A. I don't recall what it -- what I</p> <p>23 instructed everyone who was involved to</p> <p>24 provide. I -- I don't recall.</p> <p>25 Q. Well, in this statement does</p>
<p>238</p> <p>1 DAVIS, Ph.D.</p> <p>2 to the Affirmative Action Office, right?</p> <p>3 A. I said that in the moment of the</p> <p>4 incident I did not consider what happened to</p> <p>5 be retaliation or discrimination within the</p> <p>6 provisions of the policy at F.I.T.</p> <p>7 Q. Right.</p> <p>8 But that's in your own self-interest</p> <p>9 because Affirmative Action was already</p> <p>10 investigating you and Marilyn Barton, right?</p> <p>11 A. I disagree with your</p> <p>12 characterization; but yes, there was an</p> <p>13 Affirmative Action investigation ongoing.</p> <p>14 Q. Got it.</p> <p>15 Now, you collected statements from</p> <p>16 who?</p> <p>17 A. I believe I collected statements</p> <p>18 from you Umilia. I believe from Marilyn and</p> <p>19 Marjorie, although I'm not 100% sure of that,</p> <p>20 from Anton Baptiste and from Henry Wallace;</p> <p>21 and I believe those were the only people who</p> <p>22 were party to the incident.</p> <p>23 Q. Okay.</p> <p>24 So, tell me how did you ask Marilyn</p> <p>25 Barton for her statement?</p>	<p>240</p> <p>1 DAVIS, Ph.D.</p> <p>2 Ms. Barton anywhere talk about how she</p> <p>3 threatened to kill Ms. Phillips?</p> <p>4 A. Not in the portion that I could see</p> <p>5 on --</p> <p>6 MR. SELLS: Okay, scroll up.</p> <p>7 (The document is scrolling.)</p> <p>8 A. Not that I could see in that part of</p> <p>9 the screen.</p> <p>10 MR. SELLS: Okay. Keep going.</p> <p>11 Q. And now, in response to your</p> <p>12 statement that you collected from Ms. Barton</p> <p>13 and sent to HR, Cynthia Glass writes you back</p> <p>14 and says, "Thanks. Contrary to our earlier</p> <p>15 conversation, it appears that she is in fact</p> <p>16 alleging bullying, hostile work environment</p> <p>17 and this could be construed as a complaint.</p> <p>18 Thought it could be dealt with</p> <p>19 informally; but seeing this, I will need to</p> <p>20 speak with Deliwe to see what she recommends</p> <p>21 as next steps. This does not change our</p> <p>22 course on the investigation of the behavior</p> <p>23 she allegedly exhibited. Thanks, Cynthia."</p> <p>24 Thanks, Cynthia; is that correct?</p> <p>25 A. Yes, I think you read it accurately.</p>

<p>1 DAVIS, Ph.D.</p> <p>2 Q. So, let me get this straight. The 3 statement that you collected from Ms. Barton 4 was now being used by Cynthia Glass to try 5 and bring charges against Ms. Phillips for 6 bullying and a hostile work environment, 7 right?</p> <p>8 A. I cannot tell from this 9 communication whether this bullying 10 allegation relates to Marilyn Barton or 11 Marjorie Phillips.</p> <p>12 Q. If you look at the last full 13 sentence it says, "This does not change our 14 course of the investigation of the behavior 15 she allegedly exhibited."</p> <p>16 And so that's in reference to 17 Marilyn Barton, "the behavior she exhibited," 18 right?</p> <p>19 A. I can't be sure of that without 20 knowing the context of this communication.</p> <p>21 Q. Oh, really. Okay.</p> <p>22 A. Yes.</p> <p>23 Q. So, you think that there's going to 24 be an investigation into alleged bullying and 25 a hostile work environment by Marilyn Barton?</p>	<p>241</p> <p>1 DAVIS, Ph.D.</p> <p>2 Ms. Barton engaged in bullying conduct? 3 Tell me. Point it out.</p> <p>4 A. It does not use those words.</p> <p>5 Q. Got it.</p> <p>6 So let me read the third paragraph. 7 "I suggested to Ms. Phillips she share her 8 concerns with the dean and that I didn't want 9 to discuss the matter with her. She 10 continued her critical commentary and 11 questioning of my actions in a strident tone.</p> <p>12 In response, I told her loudly and 13 firmly to desist. She continued, and at some 14 point got up and approached and reached 15 toward me in an uncomfortably close manner 16 which made me feel threatened. The incident 17 ended when another person entered our office 18 and I used the opportunity to remove myself 19 from the stressful situation."</p> <p>20 Did I read that correctly?</p> <p>21 A. You did.</p> <p>22 Q. Now, that was not something -- when 23 I asked you earlier, that was not something 24 that Marilyn Barton told you in her office, 25 was it?</p>
<p>242</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I think that is entirely possible.</p> <p>3 Q. You think so? That's not the way -- 4 well, let's take a look at the statement.</p> <p>5 MR. SELLS: Can we scroll 6 backup.</p> <p>7 A. Can we --</p> <p>8 Q. Let's take a look at the statement. 9 Where in the statement -- and you are reading 10 it now. Where in the statement is there any 11 allegation that Ms. Barton bullied 12 Ms. Phillips?</p> <p>13 A. Can you explain to me how these 14 two-page documents are related? It's not 15 clear to me that Cynthia Glass' e-mail refers 16 to this report.</p> <p>17 Q. I'm sorry? These were produced by 18 your lawyers --</p> <p>19 A. Yes --</p> <p>20 Q. -- and F.I.T.'s lawyers.</p> <p>21 A. My --</p> <p>22 Q. -- so, you know, you can ask them. 23 But the point is, I asked you where in her 24 statement, the statement that you collected 25 from Ms. Barton, where does it say that</p>	<p>244</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. As I said when I answered your first 3 question, I don't recall details or the 4 complete content of the discussion that I had 5 with Marilyn that day.</p> <p>6 Q. No, but what you believed had 7 happened was that Marilyn Barton assaulted 8 Ms. Phillips. That's the way you described 9 it. The context was such that I believed 10 this could be an assault. That Ms. Barton 11 could have assaulted Ms. Phillips; isn't that 12 right?</p> <p>13 A. I was concerned about that, yes.</p> <p>14 Q. But this paragraph, in this 15 statement you collected from Ms. Barton, says 16 it in the opposite way. Says that 17 "Ms. Phillips continued her critical 18 commentary and questioning my actions in a 19 strident tone."</p> <p>20 In response, I told her loudly and 21 firmly to desist. She continued and at some 22 point got up and approached and reached 23 toward me in an uncomfortably close manner 24 which made me feel threatened."</p> <p>25 That's a lie, right?</p>

<p style="text-align: right;">245</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. That's Ms. Barton's statement.</p> <p>3 Q. That you collected, right?</p> <p>4 A. I was simply collecting e-mails. I 5 was not --</p> <p>6 Q. Yes, got it --</p> <p>7 A. -- reviewing them, reading them or 8 contributing to them.</p> <p>9 Q. And you and Ms. Barton were both 10 under investigation for discriminating 11 against Ms. Phillips, right?</p> <p>12 A. Correct.</p> <p>13 MR. SELLS: Let's scroll up.</p> <p>14 Q. "Although I raised my voice in 15 response to Ms. Phillips's unrelenting 16 criticism of me and my decision, her approach -- 17 her approach toward me made me feel harassed 18 and then menaced. I also feel that 19 Ms. Phillips' critical comments were 20 unwanted -- unwarranted and intrusive."</p> <p>21 So you and Ms. Barton concocted this 22 story so that an investigation could be 23 launched against Ms. Phillips for bullying 24 conduct, right?</p> <p>25 A. That is not true.</p>	<p style="text-align: right;">247</p> <p>1 DAVIS, Ph.D.</p> <p>2 environment. What don't you get?</p> <p>3 A. Again, this is Cynthia Glass'</p> <p>4 statement --</p> <p>5 Q. No, it's not Ms. Glass' statement.</p> <p>6 It's Ms. Barton's statement that you 7 collected in your role as the investigator in 8 Ms. Phillips' complaint, right?</p> <p>9 A. No, incorrect.</p> <p>10 Once again, I was not an 11 investigator. I was simply tasked with 12 collecting statements.</p> <p>13 Q. Well, you know that's a lie because 14 Ms. Barton told you something completely 15 different in your office. You knew that 16 statement was a lie when you delivered it to 17 Cynthia Glass; you knew it, right?</p> <p>18 A. I did not review Marilyn Barton's 19 statement, as I have said. I simply 20 collected the statements and passed them on 21 to Human Resources as it was requested of me.</p> <p>22 Q. So, what conversation is Cynthia 23 Glass talking about? "Thanks --" "Contrary 24 to our earlier conversation. It appears that 25 she is in fact alleging bullying, hostile</p>
<p style="text-align: right;">246</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. "This incident and numerous previous 3 incidents involving Ms. Phillips have created 4 a bullying, unhealthy and unproductive work 5 environment."</p> <p>6 That is in her statement, right?</p> <p>7 A. That is in Ms. Barton's statement.</p> <p>8 Q. Got it.</p> <p>9 About Ms. Phillips, right?</p> <p>10 A. Yes.</p> <p>11 Q. Now, let's go to the e-mail.</p> <p>12 And sure enough after you deliver 13 this lie, this false statement to Cynthia 14 Glass, Cynthia Glass says, "It appears that 15 she is in fact alleging bullying, hostile 16 work environment and this could be construed 17 as a complaint."</p> <p>18 Right, a complaint from Marilyn 19 Barton against Ms. Phillips?</p> <p>20 A. What I cannot discern from this 21 e-mail is what Cynthia is referring to.</p> <p>22 Q. What do you mean "what she is 23 referring to"? She is referring to the 24 comment that Ms. Barton feels like she is 25 part of a bullied and hostile work</p>	<p style="text-align: right;">248</p> <p>1 DAVIS, Ph.D.</p> <p>2 work environment and this could be construed 3 as a complaint."</p> <p>4 A. I don't recall.</p> <p>5 Q. You don't recall?</p> <p>6 A. I don't.</p> <p>7 Q. So you and Cynthia Glass were 8 working together to try and undermine 9 Ms. Phillips's complaint?</p> <p>10 A. No, that is not correct.</p> <p>11 Q. And you tried to defuse the 12 situation where Marilyn Barton threatened to 13 kill Ms. Phillips, told her that she "was 14 gonna fuck her up," told her to "shut the 15 fuck up" --</p> <p>16 MR. DRANOFF: All right, Derek 17 you don't need to -- I can't hear you --</p> <p>18 Q. You --</p> <p>19 MR. DRANOFF: I can't hear you 20 when you raise your voice to that 21 level.</p> <p>22 MR. SELLS: Okay. Okay.</p> <p>23 Q. You tried to turn this against 24 Ms. Phillips, didn't you?</p> <p>25 A. No, I did not.</p>